

19-2861

19-3009

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL UNION NO. 91,
Petitioner-Cross-Respondent,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent-Cross-Petitioner.

PETITION FOR REVIEW OF DECISION AND ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

VOLUME II—Pages 205-408

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OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Laborers International Union of	Case No.	03-CB-196682
North America, Local Union of		03-CB-201412
North America, Local Union No.		
91, (Scrufari Construction Co.,		
Inc.)		

and

Ronald J. Mantell and Ronald J.
Mantell, An Individual.

And

Scrufari Construction Co. Inc.

Place: Buffalo, New York

Dates: October 12, 2017

Pages: 194 through 312

Volume: 2

OFFICIAL REPORTERS

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Phoenix, AZ 85020
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Hearing Transcript, Volume II, Dated October 12, 2017 [Pages 194-312].

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

LABORER'S INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION
OF NORTH AMERICA, LOCAL UNION
NO. 91, SCRUFARI CONSTRUCTION
CO, INC.),

and

RONALD J. MANTELL, AND RONALD
J. MANTELL, AN INDIVIDUAL.

and

SCRUFARI CONSTRUCTION CO, INC.,

Case No. 03-CB-196682
03-CB-201412

The above-entitled matter came on for hearing, pursuant to notice, before **DAVID I. GOLDMAN**, Administrative Law Judge, at the Buffalo Hearing Room, Suite 630, 130 S. Elmwood Avenue, Buffalo, New York 14202, on **Thursday, October 12, 2017, 9:32 a.m.**

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 JUDGE GOLDMAN: All right. Back on the record. We'll get
3 started this morning with Respondent's case. I -- I did
4 consider the motion to dismiss. I'm -- I'm going to deny it.
5 Not on the merits at this point, but I want to consider the
6 case in light of the full record, just without prejudice, so
7 the Respondent to renew its argument and its post-trial brief.
8 But this -- the argument -- but the argument of the General
9 Counsel failed to make that a case. And then the -- I guess
10 the argument on the statute of limitations as well. And you're
11 free to raise that. But I'm going to consider it in light of
12 the full record and whatever you choose to, you know, put on in
13 your case. So I'll leave it at that for now.

14 MR. BOREANAZ: Okay. I understand. I do have about one
15 preliminary issue. General Counsel's second witness yesterday
16 was put on, and from what I could summarize, his testimony
17 related two -- two aspects. One, a reference to Frankie
18 Mantell. This is the brother of the Charging Party. And he
19 alleges that the conversations occurred on possibly March,
20 April or May of 2017. This would have been after the charge --
21 first charge was filed.

22 And so the -- the testimony I think can be summarized in --
23 in two ways. One is that somehow Frank Mantell was mentioned
24 during the meeting and somehow there was some allegation by the
25 witness that if you go to the Board, there will be

1 consequences. I guess that's how I'm summarizing the
2 testimony. Two aspects of it.

3 I questioned the witness about the fact that there was a --
4 a lawsuit pending in civil court involving Frank Mantell and
5 the Union and that it would be a proper subject for the
6 business manager to raise during the general -- during the
7 business manager's report. The witness conceded that.

8 With respect to the statement, I would guess if that was
9 true, that that occurred, that that would be the subject of a
10 Board investigation or a Board charge, separate and apart from
11 the charge that we're hearing here.

12 And so I wonder why the General Counsel's office decided to
13 try and smear my client and throw that dirt into this charge
14 when it's not related. If they thought it was an appropriate
15 charge, there would be an investigation and there would be a
16 complaint issued and the matter would be being pursued. I have
17 no idea why they threw that into the mix, except for the only
18 thing would be to inflame the proceedings and to perhaps try
19 and tarnish my client with a biased witness.

20 And so I -- I ask the Court to consider what the proof was
21 entered for with respect to those two aspects and consider
22 striking it from the record altogether.

23 JUDGE GOLDMAN: Okay. I would just say this: I'm not
24 going to strike anything. It came in through the normal
25 evidentiary processes. And I'll -- I like to think I'm not

1 inflammable. This is not a jury. I -- I realize there's no
2 complaint allegation so -- specifically to that -- to that
3 alleged statement.

4 You know, we'll wait and you can make closing argument that
5 it has no value at all even if it -- even if it --

6 MR. BOREANAZ: I don't know why it was even entered. I
7 have no idea other than to -- to have some collaboratory
8 effect.

9 JUDGE GOLDMAN: I -- I don't know. I mean -- all right.
10 That's -- that's -- I'm not going to strike it. It's -- it's
11 there and you can argue about what it's worth.

12 MR. DURYEA: Your Honor, I have a preliminary item as well.

13 JUDGE GOLDMAN: Uh-huh.

14 MR. DURYEA: Last night we got a chance to review at
15 further length the documents that were produced for the
16 subpoena and, there are several items that we subpoenaed that --
17 for which we didn't get anything. And I'd like to call those
18 to your attention.

19 MR. BOREANAZ: Could you wait for a second until I get
20 this --

21 MR. DURYEA: Sure.

22 MR. BOREANAZ: -- a little better?

23 MR. DURYEA: Well --

24 MR. BOREANAZ: Thank you.

25 JUDGE GOLDMAN: You're going to -- you want to read item --

1 a list of things from the subpoena that there was no response
2 to?

3 MR. DURYEA: That was what I was going to do, yes, Your
4 Honor, with your permission.

5 MR. BOREANAZ: Is that for purposes of evidentiary value?
6 They have the subpoena, there's been compliance with it,
7 there's been no effort to enforce the subpoena or claim that
8 something else wasn't done. I don't know what the purpose
9 again of this is. What's the evidentiary value to --

10 JUDGE GOLDMAN: Well --

11 MR. BOREANAZ: -- to going through this process?

12 MR. FEUERSTEIN: We would like to know if there's no --
13 if -- if the Union is saying that -- that there are no
14 documents that they have in their possession, then they're
15 responsive to those items, because that's -- when you don't
16 provide documents, that -- I guess that's an admission that
17 those things don't exist.

18 JUDGE GOLDMAN: Well --

19 MR. FEUERSTEIN: We have no -- we have -- we don't have
20 anything in writing that -- that they don't exist. We just got
21 documents. So we don't have anything saying that this does not
22 exist, this does not exist. So we just want to get
23 clarification on that.

24 JUDGE GOLDMAN: Well --

25 MR. BOREANAZ: I -- I've responded to subpoenas for years

1 and rarely is there a -- a declaration or correspondence going
2 back and forth regarding the issue. If you had some issues,
3 maybe you should have asked for that beforehand.

4 MR. FEUERSTEIN: We got them right before trial. We went
5 through them and now we're raising them.

6 MR. BOREANAZ: Okay.

7 JUDGE GOLDMAN: Okay. Here's -- let -- let me say this:
8 So the -- the -- I don't think it's inappropriate to have that
9 on the record. The formal way, in my view, would be to -- and
10 I'm not suggesting this. I'm hoping we can avoid it, but is
11 to, you know, call that custodian and say you don't have
12 anything to this, that or the other. To avoid that, I think
13 what would be easier, but off the record, to go through them
14 with counsel of the Respondent and confirm that there was
15 nothing provided for this, this and this and we can just go
16 through the list quickly on the record.

17 MR. BOREANAZ: But we've already done the confirmation --

18 JUDGE GOLDMAN: Yeah.

19 MR. BOREANAZ: -- process. We've already gone through that
20 process.

21 JUDGE GOLDMAN: Okay. So I am willing to take -- unless
22 you're going to say that it's not accurate, that these items
23 were not -- there was no -- nothing responsive provided.

24 MR. BOREANAZ: Well, I mean I don't think that the General
25 Counsel's office is going to -- you know, they might make a

1 mistake, but they're certainly not going to represent that they
2 didn't get something when they did get something.

3 JUDGE GOLDMAN: Yeah. I mean sometimes it's -- well, fine.
4 If you're comfortable about it. Just sometimes I find it's
5 more confusing when people start -- they say, "Well, what about
6 we gave you this?" So I think that can be done. And, like I
7 say, I think the more formal way is to call the custodian of
8 records and -- you know, I would prefer not to do it that way.
9 I guess it would take a lot more time to come to the same
10 affect.

11 MR. BOREANAZ: They closed their case.

12 JUDGE GOLDMAN: Well, that's true. I would let them put
13 this on though because they got these documents.

14 MR. BOREANAZ: All right. We'll go through the process.

15 JUDGE GOLDMAN: So --

16 MR. BOREANAZ: All right.

17 MR. DURYEA: I'm sorry. Are we doing this off the record?

18 JUDGE GOLDMAN: No, no. You're -- I didn't mean -- I
19 just -- I wanted -- I just didn't want to have a big fight on
20 the record about what had been given or hadn't been given. If
21 you -- if you're in a accord with that, then go for it. Just
22 give me -- how long is this list?

23 MR. DURYEA: It's --

24 JUDGE GOLDMAN: Like is there certain items from the --

25 MR. DURYEA: Yeah certain items.

1 JUDGE GOLDMAN: Okay.

2 MR. DURYEA: It's -- it's not --

3 JUDGE GOLDMAN: Read them into the record.

4 MR. DURYEA: Okay.

5 MR. BOREANAZ: Can you reference them by number, please?

6 MR. DURYEA: Yes. Sure.

7 Subpoena item number three, "All internal Respondent
8 communications regarding Ron Mantell from 2015 to the present.
9 Number four, "All records pertaining to internal Union
10 discipline issued to employee members for working without a
11 steward from January 2010 to the present." Subpoena item five,
12 "All records pertaining to internal Union discipline to
13 employee members for any reason from January 2013 to the
14 present." Subpoena number eight, "All documents showing all
15 employee members who served as Respondent stewards and the date
16 of such service from January 2015 to the present."

17 Subpoena number 11, "All Respondent lists of employee
18 members who were barred from referral to a particular employer
19 from January 2013 to the present." Item 15, "Copies of
20 Respondent's constitution and bylaws in effect in April of
21 2017."

22 MR. BOREANAZ: Can I confer with my client? And --

23 JUDGE GOLDMAN: Oh, sure.

24 So you have the constitution?

25 MR. DURYEA: I have the constitution, yes.

1 MR. BOREANAZ: Which is item 15?

2 MR. DURYEA: Item 15

3 JUDGE GOLDMAN: Okay. That's it.

4 MR. DURYEA: That's it.

5 MR. BOREANAZ: I -- I haven't yet responded. I'm still --

6 JUDGE GOLDMAN: Oh.

7 MR. BOREANAZ: -- conferring with my client.

8 JUDGE GOLDMAN: Okay. But I thought -- that's what I was
9 trying to do off the record. I thought you -- well, go ahead,
10 confer with your client. When we -- we'll go off the record --
11 if you want to say something on the record, go ahead.

12 MR. BOREANAZ: Responding to General Counsel's statement,
13 with respect to subpoenaed item number three, "All internal or
14 Respondent communications regarding Ron Mantell from November
15 2015 to the present," all of the documents that relate to Ron
16 Mantell's communication with the Union have been provided in
17 response to the subpoena. There is no, you know, internal
18 email from one officer to the next officer, et cetera. But
19 we've actually seen some -- some letters and correspondence
20 regarding the trial. That happened after November 2015. That
21 had been provided in response to the subpoena.

22 With respect to number four, there have -- there are no
23 documents responsive to that subpoena, that subpoenaed item.
24 With respect to number five, we responded to that as best we
25 can. Number eight, there are no records -- documents or

1 records that are responsive to number eight. Regarding number
2 11, there -- there may be -- and General Counsel's office can
3 -- can question the next witness about this. There's no, you
4 know, list of undesirables per se, but there might be a
5 reference via a contractor that member X should not be referred
6 to that particular contractor because member X showed up drunk,
7 or something like that. Those documents might exist but were
8 not provided to General Counsel's office in response to the
9 subpoena. I think probably because we just didn't have that
10 particular conversation. He was looking for a list of barred
11 members across the board. There is no such list of
12 undesirables for everybody that's no longer eligible on the
13 list, et cetera.

14 JUDGE GOLDMAN: You're talking about maybe a note or --
15 from a -- that originated with the contractor?

16 MR. BOREANAZ: Right.

17 JUDGE GOLDMAN: You need that?

18 MR. BOREANAZ: You know, I don't know -- I'm sure there's
19 -- I'm sure there might have been some existing -- let's see
20 what the time frame is here. From -- from the 13th -- oh,
21 yeah, from 2013. It would take an enormous amount of time to
22 shift through those records to look for them.

23 MR. FEUERSTEIN: Yeah. I would say, depending on what you
24 argue, there's a possibility that we might need that. I -- I
25 wouldn't want to say --

1 MR. BOREANAZ: Well, why don't you hear his testimony and
2 you can --

3 MR. FEUERSTEIN: Yeah. Right. I -- I -- yeah. Yeah.

4 MR. BOREANAZ: Fine.

5 JUDGE GOLDMAN: And I interrupt? Was that the last one and
6 15 was --

7 MR. BOREANAZ: It was.

8 JUDGE GOLDMAN: -- the next?

9 MR. BOREANAZ: 15 was the --

10 JUDGE GOLDMAN: Right. Okay.

11 MR. BOREANAZ: Today.

12 JUDGE GOLDMAN: All right.

13 MR. BOREANAZ: Everything was complied with --

14 JUDGE GOLDMAN: Right.

15 MR. BOREANAZ: -- this morning.

16 JUDGE GOLDMAN: Right. Okay.

17 Good? Done? Everyone? Happy? Okay.

18 MR. FEUERSTEIN: Thank you, Judge.

19 JUDGE GOLDMAN: Okay. Thank you.

20 MR. BOREANAZ: The Respondent will call Mario Neri.

21 JUDGE GOLDMAN: Mr. Neri, will you sit over there?

22 MR. NERI: Yeah.

23 JUDGE GOLDMAN: Did you hand him those documents or those
24 were -- or did he receive this.

25 MR. BOREANAZ: No.

1 JUDGE GOLDMAN: Let me hold those until someone -- if
2 somebody wants you to look at these documents. Okay. Yeah, he
3 may -- we may get to that, but --
4 MR. FEUERSTEIN: Is that -- is that ours?
5 MR. BOREANAZ: No. This is --
6 MR. FEUERSTEIN: Sorry.
7 MR. BOREANAZ: I gave Ron a copy of Respondent's 1. And --
8 MR. FEUERSTEIN: This one?
9 MR. BOREANAZ: Yeah.
10 MR. FEUERSTEIN: Do you need it again?
11 MR. BOREANAZ: No. I'll just --
12 MR. FEUERSTEIN: Okay.
13 MR. BOREANAZ: I have another one.
14 MR. FEUERSTEIN: Do you want -- do you want me to make a
15 copy for you?
16 MR. BOREANAZ: No. I think --
17 MR. FEUERSTEIN: Okay.
18 MR. BOREANAZ: -- I've got one.
19 MR. FEUERSTEIN: All right.
20 JUDGE GOLDMAN: Let me -- I'm going to ask you to raise
21 your right hand.
22 Whereupon,

23 MARIO NERI

24 having been duly sworn, was called as a witness herein and was
25 examined and testified as follows:

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Neri - Direct - Boreanaz

1 JUDGE GOLDMAN: Okay. Proceed.

2 DIRECT EXAMINATION

3 Q BY MR. BOREANAZ: Mr. Neri, what is your position with the
4 Respondent, Local 91?

5 A I work at Local 91 part-time as of this day.

6 Q Let me show you what's been marked as Respondent's
7 Exhibit 1. Will you take a look at that and let me know when
8 you're done looking at it, Respondent's Exhibit 1?

9 A These are the rules I go by. Is that what you're asking
10 me?

11 Q Well, just look at it. You've got to talk a little
12 louder, please.

13 A Okay. Yeah.

14 Q And just let me know when you're done looking at it, after
15 you flip through the pages, and I'll ask you a question.

16 A Yes.

17 Q Mr. Neri, are you familiar with Respondent
18 Exhibit Number 1?

19 A Yes.

20 Q And what is Respondent Exhibit Number 1?

21 A It's the referral rules on all labor locals in the United
22 States.

23 Q Is it the rules that are administered by you as dispatcher
24 for Local 91?

25 A Yes.

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Neri - Direct - Boreanaz

1 Q And how long have you been the dispatcher?

2 A I started in '98 part-time and I've been there part-time
3 ever since.

4 Q And so Respondent's Exhibit Number 1, do you know when
5 these rules came into place?

6 A They started in '97 and different variances were put in
7 and they were finalized in 2004.

8 Q Okay. Now, you were dispatcher in 2004?

9 A Yes.

10 Q And, to your knowledge, have Local 91's referral rules
11 changed since 2004?

12 A No.

13 Q When these rules, reflected in Respondent's
14 Exhibit Number 1, were put into place, do you know if the local
15 union sent these rules out to each member?

16 A Yes. At that time Connolly was the business agent and he
17 sent a packet to every member, one with the final variation of
18 it in 2004. And there's a letterhead there that I found and
19 gave to you that -- someone had mailed it got. Every Monday
20 that was supposed to get, you know -- whether they read it or
21 not, I have no idea.

22 Q Okay.

23 MR. BOREANAZ: Might I ask him questions right now or --

24 MR. FEUERSTEIN: Huh? Ask your question.

25 MR. BOREANAZ: Okay.

Neri - Direct - Boreanaz

1 MR. DURYEA: I don't care.

2 MR. FEUERSTEIN: Huh? No. Go ahead. Six copies?

3 MR. BOREANAZ: I'll -- I'll wait on it. I'll wait.

4 MR. DURYEA: We can make whatever you want.

5 JUDGE GOLDMAN: Let's go off the record.

6 (Off the record at 9:53 a.m.)

7 Q BY MR. BOREANAZ: Ms. Neri, I'm handing you what's been
8 marked as Respondent's Exhibit 3. And Respondent's Exhibit
9 Number 3 on the first page is a letter dated September 29,
10 2004, referencing, quote, Laborer's Local Number 91 hiring hall
11 rules, close quote. Then it's addressed to Dear Member and
12 signed by Robert Connolly.

13 Is this the letter, Respondent's Exhibit Number 3, that
14 you just referred to a moment ago?

15 A Yes, it is.

16 Q Attached to Respondent's Exhibit Number 3 are several
17 pages. Can you tell me what those several pages are?

18 A These are the same referral rules. That was the
19 final-final of the referral. That's why we went without -- or
20 that I didn't. But at that time Robert Connolly made it up to
21 supervision and international was told to mail it out.

22 Q All right. Now go back to Respondent's Exhibit Number 1.
23 You mentioned the International Union, Respondent's Exhibit
24 Number 1, has a letter on the front page dated April 7th, 2003,
25 addressed to Vincent Masino trustee of Laborer's Local Union

Neri - Direct - Boreanaz

1 Number 91, signed by Robert Luskin, correct?

2 A Yes.

3 Q And in 2003, was Local 91 under trusteeship by the
4 International Union?

5 A Yes, it was still under trust.

6 Q And was Vincent Masino the trustee at that time?

7 A Say that again.

8 Q Was Vincent Masino the trustee?

9 A He was one of the trustees, right.

10 Q Okay. And then the third page of Respondent's Exhibit
11 Number 1 is a letter dated June 10th, 2004, addressed to a
12 Michael Bolbrick (phonetic), attorney, and signed by Robert
13 Luskin?

14 A Yes.

15 Q At the time, was Robert -- Michael Bolbrick in June 2010 a
16 lawyer representing Local 91?

17 A Yes.

18 Q The next page, again, is a letter June 10th to Michael
19 Bolbrick --

20 A Yes.

21 Q -- signed by Robert Luskin from the International Union,
22 correct?

23 A Yes.

24 Q And the remaining pages of Respondent's Exhibit Number 1
25 are, in fact, the referral job rules that were put into place

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1 in 2004, correct?

2 A Correct.

3 Q And these have been the rules, Respondent's Exhibit 1 and
4 Respondent's Exhibit 3, that have been administered by you as
5 dispatcher since 2004, correct?

6 A Correct.

7 MR. BOREANAZ: I'd move 1 and 3 into evidence.

8 JUDGE GOLDMAN: Any objection?

9 MR. DURYEA: No objection.

10 JUDGE GOLDMAN: They're received.

11 **(Respondent Exhibit Number 1 and 3 Received into Evidence)**

12 Q BY MR. BOREANAZ: Now, can you explain to the
13 Administrative Law Judge briefly what a nonexclusive hiring
14 hall is?

15 A Before 1997, all 91 laborers couldn't go to work unless
16 the business agent authorized them to go to work. In the '90s,
17 if you went on a job, you had to have a slip signed by the
18 business agent --

19 Q Introducing you to the contractor?

20 A -- introducing you to go to work. So without that, you
21 couldn't go to work. After '97 -- well, it was actually '96,
22 '97, '98 because the Feds, the federal government, took over or
23 was going to take over the International. They said it was
24 illegal for us to be an exclusive hiring hall. Okay, so we
25 became a nonexclusive hiring hall. What that meant is anybody

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1 that worked for Screw Perry (sic) -- we had guys that worked
2 for Screw Perry, that's just one of our companies.

3 Q You're using it as an example?

4 A Yes. It's one of the contractors. They didn't have to
5 come in and sign a list. They didn't have to deal with the
6 Union as they say at all in the yard. In the spring, Screw
7 Perry would call individuals to come in. Not only Screw Perry,
8 Serone (phonetic), any of the contractors we deal with, that's
9 what they do. Anyone that they consider are good workers, they
10 always call back. The new system with contractors is now they
11 call for somebody for one day out of our list. After those
12 eight hours, if they don't think they can produce or they know
13 what they're doing, they automatically roll them off. That's
14 the new way to do it. Almost all contractors only call a guy
15 for one day.

16 And then if he's good, they might keep him the whole
17 summer. They have all their own key men. I mean, all our
18 contractors now have their own key men. They won't even --
19 they don't call Dick for them. They don't hire him. They
20 don't do anything. The only thing Dick still does is
21 individual job sites with their contractors, they will call him
22 and ask him who he wants to be the steward. And he may pick a
23 guy that's already working for that company to be a steward.

24 That's why it's so hard to have an actual list of who he
25 sends out for steward. That's communications between him and

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1 the contractors. We don't do work orders on them. We don't do
2 anything. The only way we know they're working is the end of
3 the month all the contractors have to send in what's called a
4 remittance form that shows all the guys that worked, how much
5 they earn, how much -- what percentage of what the Union cost
6 is, which is 10 percent, and the rest goes back to the welfare
7 department with them.

8 And that's how I check every month to see who's working.
9 I look at the list. I go to their name. If a contractor
10 submits a remittance form, they may have gone to work without
11 calling, okay. It's just a double check.

12 We have actually three checks. Supposedly, a steward
13 report -- two checks, I'm sorry. Every steward on the job is
14 supposed to mark down how many hours that the guy worked, what
15 his name is, at what local he's out of because he might be out
16 of Rochester. He might be out of some -- or he might be ours.
17 And then we get a remittance form that the contractor send
18 them, which is just a sheet of paper saying all the names,
19 hundred percent for Union dues, all the check offs that they
20 have, and that's done after every month. Diana records them
21 all in a computer and I'll see who's on the list, and I'll go
22 look and see if they got paid by them. Then I'll tell them.

23 Q All right. Let me go through the process a little bit.
24 So you mentioned Diana. Who's Diana?

25 A Oh, she's the secretary. I'm sorry about that. She does

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1 all the financial report input.

2 Q Okay. So when you come into the hall, you come through
3 the vestibule and you turn to the right, and that's where a
4 member would approach the glass enclosed office --

5 A Right.

6 Q -- to communicate with either you or Diana in the Union
7 hall, correct?

8 A Right.

9 Q And is there another secretary that's there on a part-time
10 basis in that same area --

11 A Yes.

12 Q -- that might interact with another member --

13 A Yes.

14 Q Just hold on. That might interact with a member from time
15 to time?

16 A Yes.

17 Q Okay. Who is that?

18 A Nancy Simms (phonetic).

19 Q Okay. And how often is Nancy in the office?

20 A One day.

21 Q Okay. So it's you, Nancy, and Diana that would be in that
22 glass enclosed office?

23 A Correct.

24 Q That would be where members would approach with respect to
25 Union information, correct?

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1 A Right.

2 Q Now, just by layout, the business manager's office is down
3 in the corner of the building?

4 A Down the hall.

5 Q Whereas, the Union office where the glass windows are is
6 right up front, correct?

7 A Right. Right.

8 Q So, now, a few steps from the glass windows there's a
9 couple bulletin boards, is there not?

10 A Correct.

11 Q And what information is put on those bulletin boards, if
12 you recall?

13 A The referral rules are put on with a magnet. All classes
14 that our Union has for the quarter are put on there for members
15 to sign up for classes. There's continuous classes for jobs,
16 job classifications.

17 Q Okay.

18 A Take the asbestos course, take it once for 40 hours --
19 JUDGE GOLDMAN: Just tell us what's on the bulletin board.

20 Q BY MR. BOREANAZ: Yeah, let's --

21 A Every class.

22 JUDGE GOLDMAN: No, no. But you say --

23 Q BY MR. BOREANAZ: On the board. What's on the board?

24 JUDGE GOLDMAN: But you said the referral rules with a
25 magnet, the classes. Anything else?

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1 A Oh, yeah. Work rules, the rights of the workers.

2 Q BY MR. BOREANAZ: All right. Employee rights?

3 A Employee rights. Any other correspondence that Randy or
4 Dick would want to have somebody just come in and look at in
5 letter form.

6 MR. FEUERSTEIN: Now, who is -- who is -- who is Randy?

7 MR. BOREANAZ: Randy is a training instructor.

8 THE WITNESS: Training instructor, right?

9 MR. BOREANAZ: For the training fund.

10 Q BY MR. BOREANAZ: And let's talk about the referral rules.
11 How long have the referral rules been posted on the two
12 bulletin boards steps away from the glass enclosed office?

13 A I try to post them every time we see they're missing. But
14 they've been posted basically since 2004, one place or another.
15 Whereas, in the old building which was on Seneca Avenue, they
16 had a bulletin board in the back near the welfare department
17 and we had posted it there. But the referral rule says --

18 Q Huh-uh.

19 A Oh, okay.

20 Q Just hold on a second. So the bulletin board you said
21 sometimes the referral hall rules would be missing, right?

22 A Right. Yeah.

23 Q And what do you mean by that? Somebody would take them?

24 A Well, one of the members obviously came in and -- because
25 it's only a magnet holding it. It's not in glass. It's not

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1 protected. Whatever member -- and we don't say anything when
2 they do it, just they should tell us at the front window that
3 they did it so we can replace it, but they never do.

4 They come in. They might look at it. They might need
5 page 4 or page 5. Because what happens is they'll call me up
6 and say, why did I go to the bottom of the list, and I'll have
7 to tell them because you work three days -- two three-day jobs
8 or one five-day job and then you go to the bottom of the list
9 on there. That's just the way it is.

10 Q Okay.

11 A If you work two days -- I'm sorry.

12 JUDGE GOLDMAN: And that's all right. We don't want --
13 let's let him just answer his question.

14 Q BY MR. BOREANAZ: So did there come a point in time that
15 in addition to putting them on the bulletin board you put the
16 referral hall rules someplace else?

17 A Yes.

18 Q Where did you put them?

19 A Actually, we had them on the wall. As you come in,
20 there's a wall right there with two chairs.

21 Q Right adjacent to the glass windows?

22 A Right. We had them there for a while and then people
23 complained that they couldn't see them. So then we put them --
24 in fact, Randy went out and bought a big board that was
25 magnetic so we could put it on there with a magnet --

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1 Q And --

2 A -- and we started putting it out there.

3 Q Okay. So now it's on a magnetic board?

4 A Yeah.

5 Q Where is that?

6 A That is when you come in the building, you walk by our
7 office, and you go towards the training department. That's
8 kind of the wall right there, right across from the bathrooms.

9 Q Okay. So it's in that open vestibule, correct?

10 A Correct.

11 Q That's, what, about ten steps from --

12 A From our office.

13 Q -- from the glass window through that vestibule, on a big
14 wall to the right?

15 A Right.

16 Q Open and accessible to the members, correct?

17 A Anybody that comes in, yes.

18 Q Now, there's been some testimony about an out of work
19 list.

20 A Right.

21 Q Can you tell me what an out of work list is? A member
22 comes in and signs an out of work list.

23 A There's a -- in front of the window, there's a sign-in
24 sheet and on that sign-in sheet, it says the day you sign it,
25 the time you sign it, the day you got laid off -- the day you

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1 got laid off, and then there's a column if there's any
2 concerns. Are you out of unemployment? Are you out of --
3 whatever. And you can just write in there, yes, or, you know,
4 explain what you are and then all the sheets that I gave them,
5 the members that write it in.

6 Q Do the members always put in the information they're
7 supposed to put in?

8 A No, no.

9 Q Okay.

10 A Very rarely do they ever put in the date they got laid
11 off.

12 Q Okay. So that sign-in sheet -- signed out of work sheet,
13 that's -- is it on the office side of the glass window? Is it
14 on the vestibule side of the glass window?

15 A It's actually in between.

16 Q Okay.

17 A Okay. There's a glass door and we have it sticking right
18 there so when they come in, they can just sign it.

19 Q Reach through the glass, pick it up and sign it?

20 A Well, they don't even pick it up. All they have to do is
21 just sign it.

22 Q Okay.

23 A It's in a three-ring binder. The sheets are all dated.

24 Q All right. Now, aside from a sign-in sheet, what about
25 the out of work list? And that is the list of members that are

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1 on the list and what their numbers are. Where, historically, in
2 the last three or four years has that list been located inside
3 the office?

4 A First, for a while, we put it on the bulletin board. But
5 then it was always -- that was taken also. So --

6 Q The same bulletin board --

7 A The same.

8 Q -- steps from the glass? Okay.

9 A Right.

10 Q So you put a -- a while ago you had it there?

11 A And then we --

12 Q Why did you not put it there anymore?

13 A Well, because it was always missing and we didn't know it
14 was missing.

15 Q Okay.

16 A Okay. So the referral rules say we don't have to --

17 Q I don't want to get to the rules just yet.

18 A You don't want to get to the rules.

19 Q So tell me your process of where it was --

20 A Okay.

21 Q -- over the last year?

22 A So we took -- we took it off. We just decided to leave it
23 right by the window so that if anybody came in and they wanted
24 to see it, we could show it to them and take it back.

25 Q Now, when you say "right by the window" --

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1 A Right.

2 Q -- is there a shelf on the vestibule side of these glass
3 windows?

4 A Yes.

5 Q And what's on that shelf?

6 A Well, there's -- actually, there's files.

7 Q No, on the vestibule side, not the office side.

8 A Oh, not -- well, no, I shouldn't say that. There's
9 anything with stuff for the laborer's, lip balm, shields for
10 their neck, cooling --

11 Q Okay.

12 A Cooling strips.

13 Q What's on the other side, on the vestibule side -- or I
14 mean on the office side?

15 A On our side, directly to the left is where we put all --
16 anybody that pays the dues, we give them a receipt and we put
17 the receipts right there.

18 In the middle is the sign in for the next -- for when you
19 get laid off. Just a little bit to the right of that is
20 another big rack with three things that has remittance forms,
21 the new wages and benefits. If somebody wants to see that, we
22 can give them that or we can fax it to contractors.

23 Right behind that is where we keep the out of work
24 request, or we used to keep the out of work requests. Now we
25 don't keep them there anymore.

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1 Q Okay. So --

2 A If somebody wanted to come in and they said they wanted to
3 see it, but most guys don't even want to see it. They just ask
4 us where am I on the list.

5 Q Okay. So I just want to deal with the location of the
6 list first.

7 A Right.

8 Q Okay. So it used to be on the bulletin board. Then it
9 was on the other side of the glass on this shelf, right?

10 A Right.

11 Q And when a member wants to see the list when it's on --
12 when it was on the other side of the glass, how would that
13 happen? Would they look at it directly?

14 A Okay.

15 Q Would they have to ask for it?

16 A They have to ask for it, obviously, yeah.

17 Q Okay.

18 A Or they could reach in if they knew exactly where it was.
19 But 99 percent just sort of ask for it and we would give it to
20 them, and they look at it.

21 JUDGE GOLDMAN: Is the desk man or is Diana or yourself
22 right there?

23 THE WITNESS: Yes. Diana is right there. Diana is right
24 there at the front desk and I'm at the desk right behind her.
25 Basically, though, I leave every day at 12:30. So I only work

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1 from 7 to 12:30.

2 JUDGE GOLDMAN: Is Diana full time?

3 THE WITNESS: Diana is full time.

4 JUDGE GOLDMAN: Okay.

5 Q BY MR. BOREANAZ: So did there come a point in time when
6 this out of work list, the location not on the desk or office
7 with the glass was moved?

8 A Yes.

9 Q Okay. Where was it moved to?

10 A It was moved to the glass on the very right where anyone
11 could come in and if they asked for it, I would just -- I used
12 to just say it's right there. But now they all know where it
13 is, so they just go look at it.

14 Q So the position of the out of work list now, is it more or
15 less accessible to the members?

16 A It's the most accessible it's ever been because it's on
17 the glass. Anybody can see it. They don't have to go hunt
18 for it. It's just right there. And that was per your
19 suggestion which we thought was a good suggestion.

20 Q Okay. So -- thank you for that?

21 MR. FEUERSTEIN: Nice job, Rob.

22 Q BY MR. BOREANAZ: Nice comment.

23 MR. FEUERSTEIN: Way to go.

24 JUDGE GOLDMAN: Okay. So it's no longer in a binder, it's
25 posted?

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1 THE WITNESS: It's on the --

2 JUDGE GOLDMAN: When you say it's on the glass, do you
3 mean it's --

4 THE WITNESS: Taped on the glass.

5 JUDGE GOLDMAN: Taped up.

6 THE WITNESS: Faced to the outside so they can just look
7 at it.

8 JUDGE GOLDMAN: Does it tend to be one page or two pages?

9 THE WITNESS: Depends how many people we get.

10 JUDGE GOLDMAN: So it could be either?

11 THE WITNESS: It could be two. Very rarely is it more
12 than two. The history for all the years I've been there if we
13 have a list of 95 people on it, that's a lot. Most of the time
14 it's a lot less. Right now, I think it's 82.

15 JUDGE GOLDMAN: Okay.

16 Q BY MR. BOREANAZ: So moving on from the location of the
17 referring rules, which is Respondent's Exhibit 1 and
18 Respondent's Exhibit 3. We're moving on from the location of
19 the out of work list, the numbers of where people are, let's
20 talk about how the list is administered. Okay.

21 Now, do most of the calls -- can you give me a typical
22 example of when the contractor calls for a laborer or a group
23 of laborers how that happens?

24 A There's two ways it happens. I go in -- I'm there at 6:30
25 in the morning. A contractor will call and say he needs

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1 somebody, okay. So what I'll do is I'll call Dick and tell
2 Dick that Nader needs somebody to unload a truck. That usually
3 is only one guy.

4 Since it's only one guy, Dick would have to name it
5 because if that's the only guy on the job it's a steward. So
6 he would tell me who to call, and I would call him.

7 The other way it happens is at 8:00 at night or 7:30 at
8 night they'll call Dick on his cellphone, which is 24/7 he
9 answers that, and they'll ask for somebody for the next day.
10 Okay. So he knows who's off and he'll send them. Then the
11 next morning he'll come in and he'll tell me, and I make a
12 worksheet up for him.

13 And on the worksheet that will give the contractor, the
14 date he called, the day he needs someone, the time he needs
15 someone, where he needs them. And on the back, there will be
16 whoever he sent to that job, okay.

17 And I believe you say that the contractor who called him,
18 requested him, or he's already called him, which that happens a
19 lot. The contractor calls the guy and then he calls up Dick
20 and tells him, I called so and so to go to work. So that's a
21 direct hire. Anything else besides that would be just an
22 accept in that column.

23 Q All right. So let's go through the rules.

24 A Okay.

25 Q Let's draw your attention to Respondent's Exhibit Number

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1 1, the first page of the actual rules. All right. Number 3,
2 Registration of Availability for Referral, do you see that?

3 A Yes.

4 Q Does a member, according to these rules, have to file with
5 the hall some sort of document? If so, what is that?

6 A What it is is the skills that he has or the classes that
7 he's had. There's asbestos, sealants, blueprint reading,
8 asbestos, HazMat, and stuff like that. That's when they first
9 come in the office. They first sign into the -- to become a
10 laborer.

11 Q All right. And can members update that from time to time?

12 A What they do is when they do -- like say when they get a
13 new drug card, they're supposed to bring it in to us. We make
14 a copy, put it in their file, and then I then put it under
15 skills.

16 Q All right. Let me show you Respondent's Exhibit Number
17 1 -- or Number 2, I'm sorry. Take a look at Respondent's 2 and
18 let me know when you're done.

19 A A remittance form is put in, that Diana put in under
20 Ron Mantell.

21 Q Let me take back Respondent's Exhibit Number 2. It looks
22 the same. Let me show you what's been marked as Respondent's
23 Exhibit Number 4 and have you take a look at it. When you're
24 done looking at it, just let me know.

25 A It's the skill sheet for Ron Mantell.

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1 Q All right. So in looking also at Respondent's Exhibit
2 Number 1, I asked you questions about the -- you know, the
3 member registering for availability. You described a system
4 where the member tells the union hall about his or her skill
5 sets. And then when the member puts together their information
6 about the skill set, what does the Union do with that
7 information?

8 A We put it in the computer under his name for skills.
9 There is a comment that just says skills. And we have about 30
10 skills on there, so you would just transfer whatever he put in
11 over to a column for him.

12 Q All right.

13 A Then that's in their permanent form.

14 Q Is this Respondent's Exhibit Number 4, there's a name
15 on -- there's a handwritten information on the top that says
16 "Ron's skills"?

17 A Correct.

18 Q Is that your handwriting?

19 A No. That's Diana's.

20 Q That's the Union secretary's handwriting, you recognize
21 it?

22 A My handwriting is a lot worse than that.

23 Q Is this the computer printout of the Charging Party Ron
24 Mantell's skills as he described them to the Union?

25 A Not to me.

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1 Q As he described them to the Union?

2 A Just described them to the Union. And through the years,
3 skills could be added if he took a class. The instructor would
4 send us a certificate that he passed blueprint reading. I
5 mean, we have all kinds of classes. I present a sheet that
6 shows all the classes.

7 Q Is this -- is this Ron Mantell's skill sheet that's kept
8 on a Labor 91 computer?

9 A Say that again.

10 Q Is this Ron Mantell's skill sheet kept on the computer at
11 Local 91?

12 A Yes.

13 MR. BOREANAZ: I'd move R-4 into evidence.

14 MR. DURYEA: Voir dire, Your Honor.

15 JUDGE GOLDMAN: Do you know when this was printed out?

16 THE WITNESS: Just this week, just before we came here.
17 Diana printed it out when we were doing the packet.

18 JUDGE GOLDMAN: All right. Do we know when it was last
19 updated?

20 MR. BOREANAZ: You have to look at the document.

21 JUDGE GOLDMAN: This is what they have on file.

22 THE WITNESS: This is what we have on file.

23 JUDGE GOLDMAN: So I'm going to receive that R-4.

24 **(Respondent Exhibit Number 4 Received into Evidence)**

25 Q BY MR. BOREANAZ: You indicated, Mr. Neri, that there were

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1 30 or so skills -- strike that.

2 When a member says he or she has a particular skill, does
3 the Union sort of try and verify that or anything like that?

4 A The Union gets five pages to the form, okay. So he would
5 turn it on a Monday. We wouldn't -- we would give the skill
6 sheet to the business agent or at that time there was an
7 assistant business agent. They would look it over. If they
8 wanted to, they could bring Ron if Ron was a new member and ask
9 him where he got their skills, who did he work for, how did
10 he -- you know, stuff like that.

11 Q Okay. And if we go back to Respondent's Exhibit Number 1,
12 that process, that procedure you just described is actually
13 laid out here in the rules, correct?

14 A Right.

15 Q That if somebody says they're a superstar, you know,
16 grouter, for example, and the hall thinks he's never grouted in
17 his life before, there's a procedure put in place --

18 A Yes.

19 Q -- to take care of that dispute?

20 A To challenge it, right.

21 Q All right. And if a member doesn't like the decision that
22 Local 91 says that maybe he doesn't have that particular skill
23 set, how does a member get relief if there's a dispute between
24 the local and the member regarding what their skills are?

25 A He could -- he could continue to get the National involved

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1 and they would ask him the same questions and they may come up
2 with a different theory that he does have those skills, and
3 they would overrule whatever the union, the local union does.

4 JUDGE GOLDMAN: How often do you have a dispute over
5 skills?

6 THE WITNESS: Very rarely. Now, sir, we don't even do
7 that anymore, because everyone we bring into the Union has to
8 be an apprentice. And to become an apprentice --

9 JUDGE GOLDMAN: So they come with the skills?

10 THE WITNESS: Nope, we -- we -- we teach them the -- the
11 skills. We have classes for everything; for busting, OSHAs,
12 asbestos. And with the new -- new work ethics the contractors
13 are asking for, the more you have on your skill sheet, the
14 easier it is for you to go to work. The less you have on your
15 skill sheet -- in fact, we're one of the only workers that
16 doesn't have an A, B, and C Laborer, okay? With a list like
17 this, you'd be a C Laborer. Okay, the A -- the A Laborer --
18 210 does this. They have all the skills. They have asbestos,
19 pads man, weather paid -- and they take all the refresher
20 classes. Doesn't make any difference if they go to work for
21 that, they just have the skills on their records, and that's
22 what all the new contractors want at \$100 an hour. They want
23 to be able to manage you or do whatever they can.

24 JUDGE GOLDMAN: Right. Next question.

25 Q BY MR. BOREANAZ: So getting back to Respondent's Exhibit

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1 Number 1, the referral rules; drawing your attention -- we're
2 still on Paragraph 3. We just reviewed 3-A. Drawing your
3 attention to 3-C.

4 A Got it.

5 Q What is 3-C?

6 A 3-C? I -- and -- and I'll just read this. It's already
7 -- only applicants --

8 Q Well, we can read it.

9 A Yup.

10 Q You don't -- we -- you don't need to read it.

11 A You don't need me to read it?

12 JUDGE GOLDMAN: Are you talking about assigning sheets?

13 THE WITNESS: Right. This puts all the obligation on the
14 worker. He's supposed to sign it. If he gets referred to a
15 job without us, he's supposed to immediately call us and tell
16 us, okay, basically, to make sure that there's a steward on the
17 job. If -- if there is a steward on the job, there's no way
18 the business agent wouldn't okay it if he was called to rise.
19 If he finds his own job, he's still supposed to call us.

20 Q BY MR. BOREANAZ: Okay.

21 A -- and tell us that he's working, so we know.

22 Q All right. So when somebody gets a job, they come off of
23 the referral list, correct?

24 A Correct.

25 Q Now, 3-F requires a 90-day registration? What is the

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1 reason behind the 90-day registration of 3-F?

2 A It's just a rule. The International made it a rule, and
3 it's a rule. Just like when you're driving the road, it says
4 it's 60 miles an hour, that's a rule. And we do it every 90
5 days.

6 Q If somebody doesn't register in 90 days, what do the rules
7 say?

8 A He goes to the bottom of the list.

9 Q So paragraph 4 here, in Respondent's Exhibit 4, now talk
10 about how the procedure is if somebody comes off the list,
11 correct?

12 A Correct.

13 Q And people on the list, they have a number, correct?

14 A Right.

15 Q And they don't always come off the list in sequence of
16 their number, correct?

17 A Correct.

18 Q And so let's talk about what the, I guess, priority of the
19 people coming out of the hall, and its relationship to the
20 list; paragraph 4-A, Subparagraph 1 mentions a shop steward.
21 You indicated earlier that the first person on a job is the
22 shop steward?

23 A Yes.

24 Q Is that always the case?

25 A It's -- no.

Neri - Direct - Boreanaz

1 Q All right. Under what --

2 A It's not always the case.

3 Q Okay.

4 A If the contractor has one of his men on -- on the job,
5 okay. But if the business agent thinks that he isn't qualified
6 enough to be a steward, then he -- that guy, even though he's
7 the first guy on the job, would not be the steward. He would
8 name the steward.

9 Q Okay, so in the naming of a steward, do the rules require
10 the business manager to name Number 1 on the list as the
11 steward?

12 A No.

13 Q Do the rules provide any restrictions on the business
14 manager's referral of who the steward can be?

15 A No.

16 Q Subparagraph 2, 4-A, 2 --

17 A Yes.

18 Q -- references unemployment or other benefits. And you
19 also mentioned -- I think you said that when people sign their
20 out-of-work list, they're supposed to put in information next
21 to their name, correct?

22 A Supposed to.

23 Q Like, the date they were laid off and other information,
24 and you did reference, in your testimony a moment ago, about
25 whether they're out of benefits.

Neri - Direct - Boreanaz

- 1 A Out of anything.
- 2 Q Okay, what does that mean out of anything?
- 3 A Well --
- 4 Q Everything?
- 5 A -- if they're out of unemployment. Okay, if they're out
- 6 of -- if they need sub-pay, that could go in their column also,
- 7 but if they don't let us know, there's no way we would know.
- 8 The procedure is they put it in their column, and then I would
- 9 bring it up to the business agent.
- 10 Q Okay, so if somebody needs work or needs benefits, then
- 11 they could go out of this referral hall, out of sequence, in --
- 12 out of numerical sequence --
- 13 A Right.
- 14 Q -- if -- if they put that information --
- 15 A If they put it --
- 16 Q -- on their out-of-work list?
- 17 A -- in there and we knew about it. Right. Yeah.
- 18 Q Number 3, 4 -- A-3, the next page on Respondent's Exhibit
- 19 1; foremen get referred out to job without regard to position
- 20 on the out-of-work list, correct?
- 21 A Correct.
- 22 Q There's some preference given, in Number 4, to the people
- 23 who are on picket lines for Local 91, they go out without
- 24 regard to their position on the list, correct?
- 25 A Right.

Neri - Direct - Boreanaz

1 Q 4-B, as in boy; you talked earlier about employer
2 requests. Now, does that happen? Do employers make requests
3 of members?

4 A Constantly.

5 Q Okay, and do they make requests for specific members?

6 A Absolutely.

7 Q Okay, do they make requests for specific members? Let me
8 ask a different -- do they make requests for general members,
9 but with specific skills?

10 A The contractor would know what the skill is that the guy
11 had, because he's worked for him before, so they would just
12 call us up and tell us that they would want Mario Neri, period,
13 and it's not questionable on whether they had the skill or not,
14 because that's up to the contractor who's paying him.

15 Q Now, if some contractor requests a member, do they go out
16 to that member without regard to the position on the list?

17 A Yes.

18 Q What about if a member had previously worked with that
19 employer in the previous year, does that member then go to that
20 contractor, which he or she worked with in the previous year,
21 without regard to his or her position on the list?

22 A Yes, the contractor would call. Yes.

23 Q Now, having worked with this referral hall rules for the
24 past 13 years, are you fairly familiar with the procedures?

25 A Pretty good. I still look things up sometimes.

Neri - Direct - Boreanaz

1 Q Okay, and have you administered these rules, to the best
2 of your ability, in compliance with the rules, since November
3 of 2015?

4 A Yes.

5 Q Have you administered these rules in compliance with the
6 rules since November 2015 as it relates to Ron Mantell?

7 A Yes.

8 MR. BOREANAZ: No further questions

9 JUDGE GOLDMAN: Okay. Your witness?

10 MR. DURYEA: Could we have a moment?

11 JUDGE GOLDMAN: Sure. Let's go off the record.

12 (Off the record at 10:36 a.m.)

13 **CROSS-EXAMINATION**

14 Q BY MR. DURYEA: So you testified on direct that it's a
15 steward's responsibility to write down the hours of the
16 individuals that work on a job?

17 A Yes.

18 Q And is a record -- is this in writing, and this is a
19 record that goes to the Union?

20 A Correct.

21 Q So that is a written record of who is and is not a
22 steward?

23 A Yes. The steward would put in that he's a steward, and
24 then anybody that's working on his job, whether they were out
25 of 91 or 210.

Neri - Cross - Duryea

1 Q Do you save those sheets?

2 A Oh, yeah.

3 Q Can you talk up a little bit, please, Mario?

4 A Yeah. Yeah, we had -- we had five of the others.

5 Q So you do have written records of who is serving as a
6 steward and the dates that they're serving as stewards?

7 A Yes.

8 Q Your Honor, this is one of the documents that we
9 subpoenaed that Mr. Boreanaz's Number 8 on the subpoena where
10 Mr. Boreanaz said there are no documents responsive to this
11 Number 8; all documents showing employee members who served as
12 Respondent's stewards, and the date of such service from
13 January 2015 to the present.

14 MR. BOREANAZ: I agree that if there are steward reports
15 that were sent, it would be compliant to the request. All
16 documents showing all employee members who served as stewards
17 on the date of such service.

18 Q BY MR. DURYEA: Do you know where those are kept?

19 A They would be in the file of -- they bring them in and we
20 put them in a file under contractor. You know, so in --

21 MR. BOREANAZ: Just hold on. Hold on a second.

22 THE WITNESS: Yeah.

23 MR. BOREANAZ: I can tell you that -- I mean, I don't know
24 if you want him to step out or not, but they don't always fill
25 them out, and so it's certainly -- but it is --

Neri - Cross - Duryea

- 1 JUDGE GOLDMAN: There must be some --
- 2 MR. BOREANAZ: -- responsive.
- 3 THE WITNESS: -- of them?
- 4 MR. BOREANAZ: Yeah. Right.
- 5 JUDGE GOLDMAN: I mean, so. You want to --
- 6 MR. BOREANAZ: You want to take a break and I can get
- 7 them --
- 8 JUDGE GOLDMAN: How much more --
- 9 MR. BOREANAZ: -- e-mailed to us?
- 10 JUDGE GOLDMAN: You want to finish your cross --
- 11 MR. DURYEA: Yeah.
- 12 JUDGE GOLDMAN: -- or you want to get those first?
- 13 MR. DURYEA: We just --
- 14 JUDGE GOLDMAN: I think you'd this Diana or whoever you
- 15 want get them over here.
- 16 MR. DURYEA: -- why do we need those documents --
- 17 MR. BOREANAZ: Would she know where they are, Diana?
- 18 THE WITNESS: Yeah, she can pull all the folders out and
- 19 made copies of them and send them.
- 20 MR. BOREANAZ: Okay.
- 21 THE WITNESS: From every contractor.
- 22 MR. BOREANAZ: Yeah. Yeah.
- 23 THE WITNESS: The ones that were sent.
- 24 MR. BOREANAZ: Right. We'll do that in a minute.
- 25 JUDGE GOLDMAN: Okay.

Neri - Cross - Duryea

1 MR. DURYEA: I just want to say that whether or not we
2 need those documents depends on what argument Respondent puts
3 on, and we may need those documents based on the testimony that
4 -- the testimony that they're going to give.

5 JUDGE GOLDMAN: Okay. Well, let's finish the cross and
6 then we'll --

7 MR. BOREANAZ: Can I just take a 30-second break so I can
8 get this process going?

9 JUDGE GOLDMAN: Yeah, if -- well, it can't hurt to have
10 them.

11 MR. DURYEA: It can't hurt to have them.

12 JUDGE GOLDMAN: If you're saying you don't know if you
13 need them, but why don't we get it rolling. We'll go off
14 record.

15 (Off the record at 10:48 a.m.)

16 Q BY MR. DURYEA: So talking about the out of work list; are
17 you the one who actually maintains it, as in updating it?

18 A Up until 12:30.

19 Q And who does it after 12:30?

20 A Diane, our secretary would update it after that.

21 Q And how often is it updated?

22 A Well, it depends on how many people sign in, how many
23 people we send out to work. It could be updated once a week,
24 twice a week, three times a week.

25 Q How often is it updated -- at -- so right now, it's

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1 updated --

2 A Once a week.

3 Q -- once week?

4 A Because it's really, you know, referring those people
5 going out to work. Not very many people sign it.

6 Q So when did this change from being -- when happening
7 periodically; once, twice, three times a week, to being only
8 once a week?

9 MR. BOREANAZ: I'm going to object.

10 Q BY MR. DURYEA: When did that change?

11 MR. BOREANAZ: I'm going to object to the question,
12 because it assumes facts that are not what he testified to, and
13 it's misleading.

14 JUDGE GOLDMAN: Well --

15 MR. BOREANAZ: He testified --

16 JUDGE GOLDMAN: I got it. Don't -- don't say it, because
17 -- yeah, I'm going to sustain it. If you can --

18 THE WITNESS: You want me to answer that?

19 MR. BOREANAZ: No, just wait for another question.

20 JUDGE GOLDMAN: Yeah, wait for another question.

21 THE WITNESS: Oh, I see.

22 Q BY MR. DURYEA: So have you changed the frequency by which
23 the list is updated?

24 A I did it exactly by the rules this time, instead of doing
25 it the other way.

Neri - Cross - Duryea

1 Q Speak up. I'm sorry?

2 A I did it exactly by the rules, referral rules. In the
3 referral rules, it says it has to be posted once a week for the
4 members to look at it. And until somebody was coming in
5 constantly asking for the list and taking pictures of the list.
6 We didn't mind, but it was constant, coming in.

7 Q Yeah, so what -- why did you change them? When did you
8 change this practice?

9 A Probably, I'm guessing, in June.

10 Q And of what year?

11 A Of when I posted. Okay.

12 Q Of when it's updated?

13 A When it's updated once a week. Now, if we have a group of
14 people come in, I will make a list out because of the business
15 agent.

16 Q I'm trying to get at how often the list is updated.

17 A The list is updated as needed. If there's no one that
18 comes in and signs, and there's no one that goes out to work,
19 it's not updated. So it's as needed. I could do it once a
20 week if we had a bunch of people come in and sign in, I could
21 do it twice a week. It depends on how many people come in and
22 how many people go out.

23 Q And this is your current practice, that you're describing?

24 A It's the same practice we've always had. I only post it
25 on the board once a week.

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1 Q So what you're saying is that it may be updated
2 periodically through the week, but you're only going to post it
3 once a week?

4 A Right. It may -- it may be updated, but that's for the
5 business agent to see he might want to send to work, or who he
6 might want to send work to. According to the rules, I only
7 have to post it once a week -- post it on Mondays, the end of
8 the day Monday.

9 Q Is this a change from your previous practice of only
10 posting it once a week?

11 A Well, we never posted it before. I always had it behind
12 the computer. We just started posting it when the attorney
13 told us to do it -- or recommended that we do it so we wouldn't
14 be bothered. Most of the time, there's only the one girl in
15 the office. She might be on the phone, she might be collecting
16 dues, she might be putting remittance forms in, she might be
17 doing whatever. So when somebody comes up to the window and
18 asks her to see it, she has to get up, get it, and give it to
19 them to see it, so now we just put it on the window. So the
20 reason that was done is because we had obviously more people
21 coming in. Up until this last couple of years, very few people
22 wanted to know where they were, on the list. If they did, they
23 would call up and we would look it up in the computer. Just
24 recently, there's been all this barrage of taking pictures of
25 it, being a little abnormal from the normal practice. As I

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1 said, I've been there doing it since '98. Never, have we had
2 this flurry of, "Let me see the list today. Let me see the
3 list tomorrow. Who went to work? What did they go to work
4 for?" I mean, we never had that before.

5 Q When did you change the practice of having the printed
6 list inside the glass, for people to come and ask for, to
7 posting it once a week?

8 A It was either May or June when our attorney recommended
9 that we put it on the window so we wouldn't be asked.

10 Q Can you be more specific of when it was?

11 A Exact date?

12 Q Yes.

13 A No.

14 Q So what was it that caused you to go to your attorney
15 about this practice?

16 A Well, it wasn't really -- he --

17 MR. BOREANAZ: Hold on a second. Let's not --

18 THE WITNESS: Yeah.

19 MR. BOREANAZ: -- divulge too many attorney-client
20 privileged information, if that's what you're asking for.

21 THE JUDGE: Yeah, I -- the --

22 MR. BOREANAZ: I'm in the hall all the time.

23 MR. DURYEA: But -- I --

24 THE JUDGE: Yeah. I -- the whole thing's privileged. I
25 mean --

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1 MR. DURYEA: The question is -- no --
2 JUDGE GOLDMAN: What made him --
3 MR. DURYEA: No --
4 JUDGE GOLDMAN: -- go to his attorney?
5 MR. DURYEA: Right. What made him go to his attorney;
6 that's the question. It's not --
7 MR. BOREANAZ: That's privileged.
8 MR. DURYEA: Not any --
9 MR. BOREANAZ: To seek legal advice?
10 MR. DURYEA: -- conversation. Not any conversation.
11 MR. BOREANAZ: I bumped into him --
12 JUDGE GOLDMAN: What --
13 MR. BOREANAZ: -- You know?
14 JUDGE GOLDMAN: What --
15 THE WITNESS: I didn't -- I didn't --
16 MR. DURYEA: No. It's --
17 JUDGE GOLDMAN: What event --
18 MR. DURYEA: -- what event?
19 JUDGE GOLDMAN: -- at the local?
20 MR. DURYEA: Correct. Caused you to --
21 MR. BOREANAZ: It -- that's --
22 THE WITNESS: He was there for one of his normal visits
23 and I explained it to him.
24 MR. BOREANAZ: Now, hold on. Hold on. Well, don't say
25 what you said to me.

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1 THE WITNESS: All right.

2 MR. BOREANAZ: You answered the question at this point.

3 Just, you don't need to explain.

4 JUDGE GOLDMAN: You don't need to -- you don't have to
5 tell him what you said to him.

6 (Counsel confer)

7 Q BY MR. DURYEA: So you were concerned about this problem?

8 A I was concerned about the -- being -- yeah, being asked
9 constantly. Not me so much, but when I leave, she's all by
10 herself, okay? So it's a little difficult for one person,
11 answering the phone, doing this. And I -- they don't -- you
12 know, that is not the normal practice, and we never said
13 anything when they were taking pictures of it, calling up other
14 members. And why did I know they were calling up other
15 members? Because the members would call me and ask me, why did
16 I move on the list? I says, well, how did you know? And they
17 said, well, we got told. They didn't tell me who told them.
18 So it became -- became an aggravation, so by posting it on the
19 window that has all stopped, okay.

20 Q When it was still available inside the glass and members
21 needed to come in and ask for it --

22 A Yeah?

23 Q -- was it updated as needed, the copy that the members got
24 to see?

25 A It was updated as needed, correct. Is that what you said?

Neri - Cross - Duryea

1 Q So this may have been once a week, might've been twice a
2 week?

3 A It was.

4 Q It would depend?

5 A Yeah.

6 Q So there's been a change in the practice of what members
7 are allowed to see, now that it's posted on the board? Members
8 are not allowed to see the list as it evolves during the course
9 of a week, and are now only able to see it from one snapshot,
10 once a week.

11 A Correct.

12 Q And why is that?

13 A Because the rules said we couldn't do it.

14 Q You testified that according to your assessment of the
15 list of skills that are on Ron Mantell's list of skills that
16 you would evaluate him as a C Laborer; is that correct?

17 A Correct.

18 Q And is that -- and is it your testimony that the reason
19 that he has not been referred out since November of 2015 is
20 because he's a C Laborer?

21 A Yes. I told you that was my opinion.

22 MR. BOREANAZ: And I just would point out that the C
23 Laborer was referenced to a different Union's hiring hall
24 procedures.

25 THE WITNESS: Yeah.

Neri - Cross - Duryea

1 JUDGE GOLDMAN: That -- right. The --

2 MR. BOREANAZ: Local 210 --

3 JUDGE GOLDMAN: The testimony, in his opinion; it was the
4 equivalent of a C Laborer. I guess you don't -- they don't
5 have them --

6 MR. DURYEA: Right. Right.

7 JUDGE GOLDMAN: -- as I understood.

8 Q BY MR. DURYEA: But it's your opinion that because of --
9 it's your opinion that Ron Mantell has a low level of skills,
10 and that's the reason why he has not been referred out since
11 November 2015?

12 A Absolutely not.

13 Q Why has he not? Why, in your opinion, has he not been
14 referred out since 2019 --

15 A Two reasons.

16 Q -- November 2015?

17 Q Number 1 is, if we get a call -- if I get a call and they
18 say they need somebody for one day, 2013, Ron Mantell came in,
19 and in front of me, the business agent, and the secretary,
20 said, I do not want to be called for one- or two-day jobs. And
21 we put it in the computer -- 2013, I put it in -- the secretary
22 put it in the computer. So automatically, that would pop up,
23 so if a contractor called for a one-dayer, I wouldn't -- I
24 would not send him out because of what he put in, that he did
25 not want to work one or two days. Of course, it's 2013, we're

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1 very busy, okay, and I must've called him, I don't know how
2 many times for a one-day job, and he didn't want to do it. And
3 then he finally came in and he told us, the three of us, we
4 were all there, that he did not want a one- or two-day job.

5 And Diana -- no, 2013 -- that was Nancy put it in -- put it in
6 the -- I'm sorry, it was Nancy, who put it in the computer in
7 2013, and it's been in the computer under his name --

8 Q Yeah.

9 A -- under comments.

10 Q And is it your testimony, that's the reason why he has --

11 A That's the reason --

12 Q -- not been referred out?

13 A -- why I wouldn't send him out for a one-day job. The
14 business agent can do whatever he wants to do.

15 Q So since November of 2015 --

16 A 2013.

17 Q Is it -- well, no I'm asking about the time that Ron
18 Mantell stopped being referred out. You're discussing events
19 that happened in 2013 --

20 A Yes.

21 Q -- right?

22 A Well, that's when he came in and told us, you know, and he
23 never changed it.

24 Q Right. I understand that.

25 A Okay.

Neri - Cross - Duryea

1 Q However, after 2013, after this conversation, Ron Mantell
2 still continued to be referred out to jobs. He put in hours
3 with contractors.

4 A Correct, but they were never one-day jobs. They had to be
5 more than one-day jobs.

6 Q I understand that.

7 A Okay.

8 Q Okay, and are you saying that that condition that allowed
9 him to be referred out, that there were more than one-day --

10 A Right.

11 Q -- jobs, that that stopped in November 2015?

12 A I --

13 Q That changed?

14 A I can show you all the work orders you want to look at of
15 contractors are only asking for guys for one day. After one
16 day, if they don't think they're a good worker, they
17 automatically lay them off. That's been the practice for the
18 last couple years.

19 Q Have you asked Ron, since November 2015 if he still only
20 wants to work one-day jobs?

21 A No, why would I do that?

22 Q Well, why wouldn't you do that?

23 A I wouldn't do that because he was so adamant about not
24 wanting to work a one- or two-day job. If you come in,
25 personally, in front of the business agent, in front of me, and

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1 the secretary, and you say you don't want to do that, well, we
2 take it as gospel. You don't want to do -- you don't want to
3 do a one-day job or a two-day job.

4 Q So you're saying that beginning in November 2015, when Ron
5 Mantell started being referred out --

6 A In 2013.

7 Q I'm trying to get a distinction of what was going on in
8 Ron Mantell's -- the level that he's being referred out -- the
9 difference between up to November 2015 when he's still being
10 referred out --

11 A Yeah.

12 Q -- and after November 2015, when his referrals have been
13 zero. What changed there? What happened in November 2015 that
14 made that change going from being referred out regularly --

15 A I can't --

16 Q -- to being referred out zero?

17 A I can't come up with an exact answer to that, but I can
18 tell you that a contractor called me for a one-day job, I would
19 automatically bypass him, but I'm not the only guy that gets
20 the one -- the calls for the one-day jobs. Diana gets them,
21 and Dick gets them, okay? Because remember, I'm only there
22 until 12:30.

23 Q So are you saying that when you get in -- when you get
24 calls in, you said that you get calls in, in the morning --

25 A Right.

Neri - Cross - Duryea

1 Q -- from contractors looking for workers --

2 A For the one-day for a concrete pour, for whatever,
3 somebody came -- didn't come in because they were sick.

4 Q So is it your testimony that since November of 2013 when
5 you're manning the phone in the morning for incoming calls for
6 people asking for laborers, you only get calls in for one day
7 jobs?

8 A For guys that didn't show up, or for a concrete pad. That
9 would be basically 99 percent of the work that's one day.

10 MR. BOREANAZ: Can you speak up a little bit, please?

11 THE WITNESS: Hmm?

12 MR. BOREANAZ: Can you speak up a little bit, please?

13 THE WITNESS: Yeah. I'm sorry.

14 JUDGE GOLDMAN: Yeah.

15 THE WITNESS: Go ahead. Yes, basically that's all I get
16 in the morning, those calls that --

17 Q BY MR. DURYEA: But sometimes you get calls for more than
18 a one-day job?

19 A Yes, if it's a new job starting and they say they need
20 five guys, the -- like, the landfill. I got -- I got calls
21 from them, but I would give -- if it's more than five guys,
22 Dick gets to name the foreman and the steward. So before the
23 job would be filled, I would tell him, Tug Hill, that's a
24 contractor that works on landfills, he needs five guys. He
25 would pick the two and then I would go down the list and pick

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1 the three that had the qualifications. So to work on a
2 landfill, you have to have a hazmat. Tom Mantell does not have
3 the hazmat. You have to have the drug card within one year.
4 He's never proved that he's got a new drug card, so I could not
5 call him. I would only call guys that had hazmat, OSHA, and
6 the drug card within one year, okay? And we have a lot of
7 landfills; we've got FMC, we got Somerset (phonetic), we got
8 the one on Niagara Falls Boulevard. They're always calling for
9 guys, but those are jobs that Ron Mantell could not go to,
10 because he does not have a hazmat license.

11 Q Did he have those qualifications before November 2015 when
12 he was being referred out regularly?

13 A No.

14 Q Yet he was still being referred out regularly.

15 A But not on hazmat jobs.

16 Q Right. But are you saying that -- you're saying that
17 hazmat jobs are the only jobs that --

18 A No.

19 Q -- that exist now?

20 A I just gave you an example. You said, do we get calls
21 from more than one person for one day, and I gave you an
22 example of a call I did that was for Tug Hill and it was a
23 hazmat job and it -- they needed the drug card.

24 Q All right.

25 A Now, I've gotten calls for asbestos workers. Actually,

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1 right now, we have a whole bunch of guys working on asbestos.
2 I'd say 30, 40 guys working on asbestos. It's not my fault
3 that he decided to let asbestos go. He says in his comments
4 yesterday that the reason he let those licenses go is because
5 he never worked on those jobs. That could be true, but that's
6 not why you keep going to get the -- get the license. It's
7 just in case a job comes up, you're qualified for it. That's
8 what you're supposed to do.

9 Q So are you saying that since November 2015 --

10 A Yeah.

11 Q November 2015, the time that Ron Mantell has been referred
12 out, not at all -

13 A Yeah.

14 Q -- not once --

15 A Right.

16 Q -- for almost two years --

17 A Correct.

18 Q -- that the only jobs that are coming in are one-day jobs
19 or jobs that have qualifications -- have requirements that he's
20 not qualified for; is that your testimony?

21 A Let me --

22 Q Those are the only type of jobs that have come in?

23 A To clarify what I said, is I said that I am there in the
24 morning and if I get a call that's for a one-day job --
25 actually, it could be for four hours to unload a truck, a

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1 concrete pour, somebody didn't show up for work, they need a
2 replacement; that's the calls that I get in the morning. Am I
3 saying all the calls that come in are for one-day jobs?

4 Absolutely not. Okay, they're not.

5 Q So you testified about the rule that when a worker gets
6 his own work outside of the referral list --

7 A Right.

8 Q -- that it's his responsibility to call the local and
9 inform them of this?

10 A Correct.

11 Q Is that correct?

12 A Yeah, I think did --

13 Q How do you police how this -- how do you police whether
14 this is being done or not?

15 A If they work for a Union contractor it comes in on a
16 remittance form, so there's no way they can hide it. It's the
17 only way we found out Ron was working. So we would --

18 Q So is anyone besides Ron -- well, it must happen that
19 other individuals get their own work and don't inform --

20 A Correct.

21 Q -- the Local, correct?

22 A Correct. That happens.

23 Q So has anyone ever been disciplined for not doing this?

24 A No, here's -- here's the way it would work: I would find
25 out somebody has work. I would go to Dick. Dick would find

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1 out if there was a steward on the job. If there's a steward on
2 the job, it's up to his discretion what's going to happen. If
3 -- he may say nothing can happen to that guy because the guy
4 might've worked for the contractor once before. So he signs
5 the list. He goes to work. He doesn't call us like he's
6 supposed to call us, so he stays on the list, but when the
7 remittance forms come in, I will double-check and I'll see that
8 he is working, and I will tell Dick. Dick will call up to see
9 if there is a steward on that job. If there's a steward on
10 that job, there's really not too much we can do, because they
11 can find all the work.

12 Q What if there's not a steward on the job?

13 A Then, it's exactly what just happened. Okay.

14 Q Has this ever happened before?

15 A Has it happened before? It's happened before, years ago.

16 I -- I was -- there was actually a --

17 MR. BOREANAZ: Can we have a time frame, please?

18 THE WITNESS: Timeframe?

19 MR. BOREANAZ: When you say years ago?

20 THE WITNESS: I'm talking when Butch was --

21 MR. BOREANAZ: Twenty years ago?

22 THE WITNESS: Twenty years ago.

23 Q BY MR. DURYEA: So it's your testimony that approximately
24 20 years ago, an incidence happened where an individual got his
25 own work, he worked a job without a steward --

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1 A Correct.

2 Q -- and this never happened again --

3 A Yes, as far as I know.

4 Q -- until Ron Mantell?

5 A Yeah, as far as I know, it hasn't happened.

6 Q During all the years that Rod was the business agent?

7 Didn't happen, because they know if they go to work without a
8 steward, they're going to be punished. It's not like it's not
9 a rule that you know, okay? We have guys that call us up and
10 say they're going to work and they ask Dick if there's a
11 steward there, and he says, yes. If there's no steward, they
12 can't go to work.

13 Q Are you aware that the job that Ron Mantell worked was
14 only a one-day, six-hour job?

15 A It doesn't make any difference if it's two hours.

16 Q But doesn't that show that he wants to work one-day jobs?

17 A Not from us. He did that through the contractor on his
18 own. Why he did that, I don't know, because he's never come in
19 and told us he'd work a one-day job. That would change the
20 whole criteria. That's his responsibility. It's easy the way
21 this business works. If you become a laborer, you have
22 responsibilities, you have rules, okay? The business agent has
23 rules. We have rules. The secretary has rules. Everybody has
24 rules they have to follow. If you don't follow the rules, you
25 can get punished, okay? It's that simple. It's not -- you

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1 don't have to be a genius to be a laborer. You got to get as
2 many skills as you can get so you're always ready to go to
3 work. If you're working for a contractor and you only have
4 three or four skills and Rob has 25 skills, who's he going to
5 keep? He's going to keep Rob. This is a business where if you
6 are a laborer, you have to work for yourself. You have to
7 improve yourself.

8 Q Then why was Ron Mantell getting lots of hours through the
9 hiring hall prior to November 2015?

10 A Could've been one or two reason, and I can look up the
11 work orders were they recalls? Are they -- maybe he got
12 recalled. You heard Rob yesterday mention that Ron used to get
13 recalls all the time -- maybe that's why. But right now, he
14 doesn't get any recalls. There isn't a contractor calling for
15 him. If a contractor calls for Ron, sends us a fax, we have to
16 send him to work. We cannot not send him to work, then we get
17 punished. That's the rule, okay? There's no one that's
18 calling for Ron. I don't know what the reason is. You tell --
19 he -- he can't tell me what the reason is.

20 JUDGE GOLDMAN: What's the second reason?

21 THE WITNESS: Huh?

22 JUDGE GOLDMAN: You said it was one of two things.

23 THE WITNESS: I said that, yeah. Couple -- you mean, if
24 someone gets called?

25 JUDGE GOLDMAN: No, he asked you why he wasn't getting

Neri - Cross - Duryea

1 called, you know, since November 2015; you said it could be one
2 of two reasons.

3 THE WITNESS: Well, the one reason is I wouldn't call him
4 because he says --

5 JUDGE GOLDMAN: Oh, the one-day?

6 THE WITNESS: Yeah, that was already one reason I gave,
7 and this would be the other reason.

8 Q BY MR. DURYEA: Do you know what this document is?

9 MR. BOREANAZ: What are you referring to the document?
10 Can I see what --

11 JUDGE GOLDMAN: Yeah, show Counsel.

12 MR. BOREANAZ: -- you're showing -- the document --

13 JUDGE GOLDMAN: You've got to show Counsel --

14 MR. DURYEA: Yeah.

15 JUDGE GOLDMAN: -- first.

16 MR. DURYEA: This is a document that is in response to the
17 subpoena.

18 MR. BOREANAZ: I'm going to mark it.

19 JUDGE GOLDMAN: Do you have copies for us?

20 MR. DURYEA: No, we're not sure we want to do anything
21 with it yet. Hang on.

22 JUDGE GOLDMAN: It's GC-16.

23 **(General Counsel Exhibit Number 16 Marked for Identification)**

24 JUDGE GOLDMAN: Let me take a look at it.

25 MR. DURYEA: Can I see it again, please?

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1 JUDGE GOLDMAN: Show it to Counsel.

2 MR. BOREANAZ: I'm sorry. I just want to identify where
3 it is. Okay.

4 JUDGE GOLDMAN: Let me see it.

5 Q BY MR. DURYEA: Do you know what this is?

6 A It says it's a weekly dispatch hall, right now.

7 Q Did you put this together?

8 A I may have. Was this in the packet?

9 Q This was in the packet of things that were provided in
10 response to the subpoena.

11 A Oh, it was either I did it, Diana did it, or Nancy did it;
12 all three of us were working on it. I don't really
13 particularly remember doing this, so it could've been Nancy or
14 Diana that did this. We were all doing different stuff to get
15 whatever you asked for.

16 Q Can you describe what is, what it's showing?

17 A It shows guys that went to work, the list they were on,
18 and the job they went to. It doesn't show the -- it shows the
19 contractor, which is A-1 Land Care, which Ron worked for quite
20 a bit, okay. They may have called for him on this job. He
21 was, like, a regular for them for a while. In fact, at some
22 point, when I called him to go to work, he says, I'm waiting
23 for A-1 to call me.

24 MR. DURYEA: We're going to get copies made of this
25 document.

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1 JUDGE GOLDMAN: Okay.

2 THE WITNESS: Sure.

3 JUDGE GOLDMAN: Do you want to wait?

4 MR. DURYEA: Yeah, I'd like to wait until we have the
5 copies.

6 JUDGE GOLDMAN: All right. Okay, go off the record.

7 (Off the record at 11:21 a.m.)

8 Q BY MR. DURYEA: This -- tell me again what this is?

9 A It's a weekly dispatch of work orders.

10 Q This is a list of members who've been referred out to
11 jobs?

12 A Correct.

13 Q And this is from what period?

14 A Well, here it says 9/17/2015 to 9/9/2015 for Ron Mantell.
15 Do you want me to read them off to you?

16 Q No. No, that's --

17 A Okay.

18 Q That's fine. Up at the top under -- it says for referral
19 list, journeymen --

20 A Um-hum.

21 Q -- for the period.

22 A Oh, there, 1/1/2015 to 10/1/2017.

23 Q So are you saying that this is a list of all members who
24 have gotten jobs through the hiring hall during this time
25 period?

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1 A Well, this is work orders that we put in. The work orders
2 that we put in could've been somebody we sent out, somebody the
3 contractor recalled, somebody the contractor requested, and
4 somebody that was direct-hired. The contractor called them and
5 then they call us, which they're supposed to do, and tell us
6 they're going to work.

7 Q So this includes all of those people?

8 A For those -- yeah.

9 JUDGE GOLDMAN: Who was referred out who's not on this
10 list?

11 THE WITNESS: Say that again?

12 JUDGE GOLDMAN: Was there anyone referred out during this
13 two-and-a-half year time period --

14 THE WITNESS: Now --

15 JUDGE GOLDMAN: -- who's not on this list?

16 THE WITNESS: If we do a work order, they're on this list.

17 JUDGE GOLDMAN: I'm saying, who was called out? Who was
18 referred out that's not on this list?

19 THE WITNESS: Any --

20 JUDGE GOLDMAN: Is there anyone?

21 THE WITNESS: Anyone that we didn't put a work order in
22 on.

23 JUDGE GOLDMAN: Okay, and why would you not -- what would
24 be the circumstances where you wouldn't put a work order?

25 THE WITNESS: They went to work and didn't tell us, which

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1 the contractor has the right to call them. We have 240
2 members.

3 JUDGE GOLDMAN: I guess what I'm asking is --

4 THE WITNESS: Yes?

5 JUDGE GOLDMAN: -- if you -- if the Local referred them
6 out they're on this list?

7 THE WITNESS: Those are work orders that we put in. They
8 could've been requested, not referred out. They could've been
9 recalled, not referred out. And they could be a direct-hire.
10 Everyone --

11 JUDGE GOLDMAN: And then they're not on the list?

12 THE WITNESS: No.

13 JUDGE GOLDMAN: Okay.

14 THE WITNESS: They would be on that list.

15 JUDGE GOLDMAN: Who's -- okay.

16 MR. BOREANAZ: If there's a work order.

17 MR. FEUERSTEIN: I want to know if this is a --

18 THE WITNESS: If there's a work order on --

19 MR. FEUERSTEIN: If this -- I want to know --

20 THE WITNESS: -- then they're on that list. If there
21 isn't a work order on them, they're not on the list.

22 JUDGE GOLDMAN: Okay, but I want to know this; but a work
23 order includes people you referred out, people the contractors
24 called, and requested.

25 THE WITNESS: That we know about.

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1 JUDGE GOLDMAN: I understand that.

2 THE WITNESS: Yeah.

3 JUDGE GOLDMAN: You have to know about it.

4 THE WITNESS: Right.

5 JUDGE GOLDMAN: If you knew about it, they're on this
6 list?

7 THE WITNESS: If we knew about it, they're on that list.
8 If we didn't know about it, they just went to work, which we
9 have about 150 members to 160 members that automatically go to
10 work, they never assigned the out-of-work list. Okay,
11 contractor in the spring just calls them to go to work.

12 JUDGE GOLDMAN: Right. Because it's non-exclusive?

13 THE WITNESS: Right.

14 JUDGE GOLDMAN: Okay.

15 Q BY MR. DURYEA: So I don't quite understand. I understand
16 that people who get their own work are not included on this
17 list.

18 A That's not true if that's a direct-hire. If they call us,
19 I'll put a work order in just so we can follow up. We try to
20 follow them with work orders, steward reports, and remittance
21 forms.

22 Q So if you know about the work being done, it's on this
23 list?

24 A If we know that they went to work, because they told us or
25 the contractor asked for them or we send them out, they would

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1 be on this list. The only way it gets on this list is because
2 either I or Diana or Nancy inputs it into the computer. It
3 wouldn't get on this list if we didn't input, okay?

4 MR. BOREANAZ: Just wait for the question.

5 THE WITNESS: Huh?

6 MR. BOREANAZ: Wait for the question.

7 THE WITNESS: Okay.

8 JUDGE GOLDMAN: Ready?

9 Q BY MR. DURYEA: Yeah, so do you know how many -- do you
10 know how many members were referred out to work in 2015?

11 A That -- I could go on the computer and find out. I think
12 we gave you that list, too.

13 Q Well, this is -- this is the list you gave us.

14 A Well, we gave you -- you wanted hours worked from such --
15 form such-and-such a date, which we gave you a list of that.
16 That would say how many hours they worked that month.

17 JUDGE GOLDMAN: Yeah, but I just want to make sure we -- I
18 know what I'm looking at here.

19 THE WITNESS: Yeah.

20 JUDGE GOLDMAN: This would list every member referred out
21 in 2015?

22 THE WITNESS: Sure.

23 JUDGE GOLDMAN: Among others?

24 THE WITNESS: Yeah.

25 JUDGE GOLDMAN: But it would --

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1 THE WITNESS: For the time frame, yeah.

2 JUDGE GOLDMAN: Okay. All right.

3 THE WITNESS: If we put it in --

4 MR. BOREANAZ: Wait for the question.

5 THE WITNESS: -- we should be able to get it come out.

6 MR. BOREANAZ: All right. Just wait for the question.

7 THE WITNESS: It says weekly dispatch, so I'm assuming
8 that's what it is.

9 JUDGE GOLDMAN: All right.

10 Q BY MR. DURYEA: So we've counted on this list and we've
11 determined that this lists 36 referrals for 2017.

12 A It could be. Yes. I -- I can't answer that, but I'll --

13 MR. BOREANAZ: There's no question, actually. He's made a
14 statement.

15 THE WITNESS: Oh, yeah.

16 MR. BOREANAZ: Wait for the question.

17 THE WITNESS: I can't agree with it, because I -- I --

18 MR. BOREANAZ: Wait for a question.

19 THE WITNESS: -- don't --

20 MR. BOREANAZ: Just --

21 Q BY MR. DURYEA: So is that accurate?

22 A Again, you're asking me -- I don't know. I would think it
23 is because the people that we do work orders on should be in
24 there, okay? I can tell you the people we don't do work orders
25 on, if you would like to know that list or if you want to ask

Neri - Cross - Duryea

1 me.

2 JUDGE GOLDMAN: Okay, I'm not sure what you're -- I mean,
3 I think, the -- I mean, I think this list is their document,
4 and it is what it is. I'm not, you know -- but you don't need
5 to count them up --

6 THE WITNESS: Yeah.

7 JUDGE GOLDMAN: -- to get him to -- it's going to count
8 the same one way or another.

9 MR. DURYEA: Yeah, it just strikes me as improbable, the
10 numbers, the total numbers here.

11 JUDGE GOLDMAN: Well, that's not an appropriate comment.
12 I mean, that's, you know, I -- I mean -- anything else?

13 Q BY MR. DURYEA: So did you have a conversation with Ron
14 Mantell at the hiring hall on June 26th of this year?

15 A I kind of remember it. I, you know, it was a passing
16 conversation, if that's the one where he asked me for the list,
17 and I told him it was the same list that you saw yesterday.
18 And he says something to the effect, he has a right to see the
19 list. And I said, you just saw the list. I don't know, I
20 don't remember the whole conversation. Anyway, the way he
21 projected it is not the way I remember it. Of course, that can
22 happen very easily, okay? I don't remember telling him there's
23 absolutely no way he can have it. I told him it was the same
24 list. He -- it was just -- date before.

25 Q So you told him that -- he asked to see the list --

Neri - Cross - Duryea

1 A Yeah.

2 Q -- and you told him that you were not going to give it to
3 him?

4 A I told him it was the same list he had. He may have
5 assumed that I not -- he wasn't going to get it, and probably
6 -- I don't know if I would've given it to him or not. I'm just
7 saying, when he came -- when he asked me, I says, it's the same
8 list that you got yesterday. We didn't change anything, okay?

9 Q Did you give him the list?

10 A I don't remember if I did or not. I may not have and I
11 may have. I don't remember. He was always taking pictures of
12 the list, so I -- I -- I don't know if I gave him the list, or
13 I don't know if he asked Diana first before he saw me coming
14 out of the bathroom. I have no idea. All I know is, he was
15 kind of angry and cross.

16 MR. DURYEA: No further questions --

17 JUDGE GOLDMAN: Okay.

18 MR. DURYEA: -- at this point, Your Honor.

19 JUDGE GOLDMAN: All right. Any follow-up?

20 **REDIRECT EXAMINATION**

21 Q BY MR. BOREANAZ: You mentioned that, under cross-
22 examination, and in response to questions by the administrative
23 law judge, that the trend for the employers for Local 91 is to
24 ask for one- and two-day jobs, correct?

25 A Correct.

Neri - Redirect - Boreanaz

1 Q And -- meant -- test the members out, so to speak?

2 A Correct.

3 Q You also testified that it's the trend now that
4 contractors require more certifications; is that accurate?

5 A Yes, the more -- yes.

6 Q And this drug testing requirement; is that more needed
7 today than it was, for example, three and four years ago?

8 A Absolutely.

9 Q And do you know why? I guess it doesn't matter why.

10 A Well, it's comp insurance. They get a discount if a guy
11 has certain certificates.

12 Q Okay.

13 A I don't know what it is. This is what a contractor told
14 me.

15 Q All right.

16 A They might save 5 percent on their comp insurance, or 4
17 percent. I don't know.

18 Q So was 2016 a strong year for the Union, or a weak year
19 for the Union?

20 A It was a weak year.

21 Q Was there less hours worked or more hours worked in 2016
22 by Local 91 members than in 2015?

23 A Yes, less hours.

24 Q You were asked questions about why Ron Mantell was not
25 referred out. Do you recall if Ron failed to register the 90-

Neri - Redirect - Boreanaz

1 day list, as required by the referral rules?

2 A I think he only did it once in all the times that I --

3 Q And according to the rules, what happens when somebody
4 doesn't file a 90-day?

5 A They go to the bottom of the list.

6 Q Now, you were asked questions about: Why didn't you check
7 with Ron, if he still didn't want to go out on one- and two-day
8 jobs; do remember being asking that question?

9 A Yes.

10 Q Now, do you have the time to go have conversations with
11 each one of all the members to see if the instructions they
12 gave you in the past are still applicable?

13 A I'm not there enough.

14 Q Now, were there any other restrictions that Mr. Mantell
15 gave you with respect to his desire to be referred out, other
16 than not wanting to do one- or two-day jobs?

17 A This was a phone conversation. Ronnie called me and asked
18 me if there was any work. I says, right now, Scrufari's got a
19 lot of busters working.

20 MR. DURYEA: Can we get a timeline on this?

21 THE WITNESS: I'll -- let me finish the --

22 JUDGE GOLDMAN: We'll do it, yeah.

23 MR. BOREANAZ: I'll follow up with the time --

24 JUDGE GOLDMAN: Go ahead.

25 Q BY MR. BOREANAZ: You got a phone call from Ron?

Neri - Redirect - Boreanaz

1 A He asked me if there was any work, and that was when
2 Scrufari was looking for busters.

3 Q Okay.

4 A And I asked him if he would want to do that, and he says,
5 he doesn't want to bust.

6 Q Okay, and was that conversation with Ron in the last one
7 year?

8 A Yeah, it was just June, I think it was.

9 Q June of 2017?

10 A Two -- two -- when Scrufari -- I -- I'd have to look in
11 the records to see. He needed, like, 30 guys to bust.

12 Q Now, Mr. Neri, did you ever, in administering the hiring
13 hall rules, refuse to send Ron Mantell out because he filed
14 charges with the Board?

15 A No, never.

16 Q Mr. Neri, while you were administering the hiring hall
17 procedures, as a dispatcher for Local 91, did you ever refuse
18 to refer Mr. Mantell out because Frank Mantell engaged in
19 Facebook posts critical of the Union?

20 A No, never.

21 MR. BOREANAZ: No further questions.

22 JUDGE GOLDMAN: Anything?

23 MR. DURYEA: Quickly.

24

RECROSS-EXAMINATION

25 Q BY MR. DURYEA: You testified that 2016 was a weak year

Neri - Recross - Duryea

1 for the Union and less -- there were less hours worked?

2 A Correct.

3 Q By what percentage, would you say?

4 A Well, I'll give you an example; 2015, there was 300 man-
5 hour -- 300,000 man-hours they were punching. 2016; 255,000
6 man-hours, so you can just -- that's about a quarter less. No
7 -- yeah, a quarter.

8 JUDGE GOLDMAN: It is what it is. Yeah.

9 THE WITNESS: Huh?

10 JUDGE GOLDMAN: It --

11 THE WITNESS: Yeah.

12 JUDGE GOLDMAN: You don't have to do the math.

13 THE WITNESS: Okay.

14 Q BY MR. DURYEA: What about 2017, the numbers for 2017?

15 A They were weak, too. We won't know until the end of the
16 fiscal year, which is June 30th, of next year. Actually, 2017
17 goes all the way to June 30th of 2018.

18 Q What -- how many man-hours so far in -- up to date?

19 A I don't know. I'd have -- I could go on the computer and
20 maybe get it, but I - I couldn't, you know, off the cuff,
21 because see, we -- we have so many guys that work for
22 contractors without coming to hire hall. We've got to get the
23 remittance forms from the contractors to see --

24 JUDGE GOLDMAN: Okay, he just -- if you don't know the
25 answer --

Neri - Recross - Duryea

1 THE WITNESS: No, I don't know the answer.

2 JUDGE GOLDMAN: -- then you don't know the answer, that's
3 all.

4 THE WITNESS: There's no way I could answer that.

5 MR. DURYEA: No further questions.

6 MR. BOREANAZ: No questions.

7 JUDGE GOLDMAN: Okay. Thank you. You're excused.

8 THE WITNESS: Okay, thanks.

9 JUDGE GOLDMAN: What do you --

10 MR. BOREANAZ: Early lunch break, maybe?

11 JUDGE GOLDMAN: If that's -- I mean, you got a longer
12 witness?

13 MR. BOREANAZ: Yeah.

14 JUDGE GOLDMAN: Why don't we do that.

15 MR. BOREANAZ: Well, you've got to get to a doctor's
16 appointment?

17 UNIDENTIFIED SPEAKER: Hmm?

18 MR. BOREANAZ: You got to get to a doctor's appointment?
19 You expect -- never mind.

20 MR. DURYEA: You want to do a short lunch, Judge?

21 JUDGE GOLDMAN: How many witnesses do you have?

22 MR. BOREANAZ: I'm not sure.

23 JUDGE GOLDMAN: Okay.

24 MR. BOREANAZ: I'm going to reassess.

25 JUDGE GOLDMAN: Well, we'll just do -- take an hour.

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Chavi - Direct - Boreanaz

1 We'll come back at 12:45.

2 MR. BOREANAZ: That works for me.

3 (Off the record at 11:42 a.m.)

4 MR. BOREANAZ: Matthew Chavi.

5 JUDGE GOLDMAN: Have a seat right up here.

6 MR. BOREANAZ: Will you spell your name please?

7 JUDGE GOLDMAN: Oh, let me -- let me swear him in first.

8 Have a seat. Raise your right hand.

9 Whereupon,

10 MATTHEW CHAVI

11 having been duly sworn, was called as a witness herein and was

12 examined and testified as follows:

13 JUDGE GOLDMAN: Okay. Proceed. And make sure and keep
14 your voice up so the court reporter can get it.

15 THE WITNESS: I can do that.

16 JUDGE GOLDMAN: Okay.

17 DIRECT EXAMINATION

18 Q BY MR. BOREANAZ: Mr. Chavi, are you a member of Local 91?

19 A Retired.

20 Q And how long have you been retired?

21 A A year and a half now.

22 Q How long did you work for the Union?

23 A About 35 years.

24 Q Let me show you what's been marked as Respondent's Exhibit

25 3, which is a letter from then business manager Rob Connolly

Chavi - Direct - Boreanaz

1 back in 2004, containing the hiring call referral rules. Did
2 you receive a copy of those?

3 A Back when they came out, I believe after this was all
4 redone.

5 Q Now, there's been some testimony about a conversation that
6 Mr. Mantell says occurred between he and Richard Palladino. Do
7 you recall a conversation where Ron Mantell confronted Mr.
8 Palladino in the back of the Union hall?

9 A Yeah.

10 Q Do you remember what year that was? Let me ask you this,
11 do you remember what season it was?

12 A I'm going to say it was late in the year. It was cold
13 out.

14 Q Okay.

15 A You know maybe in November, December, somewhere.

16 Q Okay. But last year or this year?

17 A Yeah, I believe the end of last year.

18 Q Okay. Do you recall the subject matter of Ron's concerns
19 when he confronted Mr. Palladino?

20 A Yes, I do.

21 Q What do you recall Ron saying initially to Mr. Palladino
22 when he confronted Mr. Palladino?

23 A He came back and said that he needed to go to work and
24 wanted to know if Dick would send him out to work, that he
25 needed to go to work.

Chavi - Direct - Boreanaz

1 Q Okay. And did Dick respond to him?

2 A Yeah. Well, he basically said, you know, which is true,
3 there was a lot of guys wanting to go to work at the time. But
4 you know, at the end of the year then, you know, if he had a
5 job for him, if something come up, he'd see what he could do.
6 And he also told Ron that, you know, he has the option of going
7 out and finding his own work, you know, his old contacts or
8 callbacks or if he could find someone if he needed to go to
9 work or not. But he said he'd see if he could do something.

10 Q Now was Ron satisfied with Dick's response?

11 A I don't think so.

12 Q Did Ron press further?

13 A Yeah. It -- Ron wasn't happy with the answer, and didn't
14 think that -- I don't know, maybe he didn't trust Dick saying
15 that he'd see if he could put him out or not, you know, and
16 brought up some stuff about all the stuff the men tell him,
17 there's no -- for the good of the Union and that he thought
18 Dick should, you know, put him out to work, put him out to
19 work. They say Dick ran already, he could go out and if
20 contractors want him or liked him, he could go out and get his
21 own work.

22 Q Was Ron upset? Did you see him --

23 A Not at the beginning, he wasn't. Then he came back to
24 talk, at the beginning. But after -- he started heating up all
25 of a sudden. And I, you know, I was just sitting there. I

Chavi - Direct - Boreanaz

1 didn't want to get involved or say anything. And I just kind
2 of sat back. It wasn't my business to get -- but he started
3 getting a little hot when he started bringing up that his
4 family members or the stock had gone down and that he thought
5 that Dick just wasn't putting him out to work. You know, he
6 did start heating up. Yeah, he did start to get mad at him.

7 Q So did Dick or Ron bring up Frank Mantell?

8 A I believe Ron he brought it up.

9 Q All right. And did you hear Ron threaten Dick about going
10 to the NLRB?

11 A Near the end, after -- yeah, after, you know, they went
12 back and forth, a little bit about the family members. Like I
13 said, again, that Ronny's family had thought he should be taken
14 care of. And in the end, it did come up. If Dick wasn't going
15 to send him to work, he was going to go to the NLRB and you
16 know.

17 Q What did Dick say in response, if you recall?

18 A If I remember correctly, Dick looked at him and said go
19 ahead and do what you have to do.

20 MR. BOREANZ: No further questions.

21 JUDGE GOLDMAN: Cross.

22 **CROSS-EXAMINATION**

23 Q BY MR. DURYEA: So you say in this conversation that you
24 believe that Ron Mantell was the one who brought up Frank
25 Mantell?

Graveyard Discussion--Boreanz

1 A He brought up all of his whole family, which is his uncle
2 and his father and his brother, Frank.

3 Q Do you believe he brought -- you believe that he brought
4 them up, or you're certain?

5 A I heard it. I sat down and heard him bring it up.

6 Q Yeah, where were you in relation to this conversation?
7 How close -- how close were you?

8 A Probably from here to that chair.

9 MR. BOREANZ: The record will reflect the distance of
10 about five or six feet.

11 THE WITNESS: Within ten feet.

12 JUDGE GOLDMAN: Go with that. Okay.

13 MR. DURYEA: No further questions.

14 JUDGE GOLDMAN: Okay. Thank you. You're excused.

15 Next witness.

16 MR. BOREANZ: William Grace.

17 JUDGE GOLDMAN: Grab a seat. Raise your right hand.

18 Whereupon,

19 WILLIAM GRACE

20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:

22 JUDGE GOLDMAN: Have a seat.

23 DIRECT EXAMINATION

24 Q BY MR. BOREANZ: Grace, are you a member of Local 91?

25 A Yes, I am.

Grace - Direct - Boreanaz

1 Q I'm showing you what's been marked as Exhibit R-3. Do you
2 recognize that?

3 A Yes, I do.

4 Q It's a copy of the referral hall rules. Did you receive a
5 copy of those referral hall rules from then business manager,
6 Robert Connolly, back in September of 2004?

7 A Yes, I did. Yes, I did.

8 Q Okay. One second. Mr. Grace, I'm handing you what's been
9 marked as Respondent's Exhibit Number 5. Do you recognize that
10 document?

11 A Yes.

12 Q What do you recognize it to be?

13 A Constitution of laborers, Local 91.

14 Q Now, is this Respondent's Exhibit 5 the local Union
15 constitution by which Local 91 must abide?

16 A Yes.

17 Q And do you know who developed this constitution?

18 A The International.

19 Q Okay. And do you have a -- are you an officer of the
20 Union?

21 A Yes.

22 Q What is your position?

23 A I am currently president of the Union.

24 Q As president, are you on the executive board of the Union?

25 A Yes.

Grace - Direct - Boreanaz

1 Q Is that an elected position?

2 A Yes.

3 Q When were you elected?

4 A I believe it was a year and some months back.

5 Q Okay.

6 JUDGE GOLDMAN: I'm sorry. Both positions are elected?

7 THE WITNESS: Yes.

8 Q BY MR. BOREANZ: Now, let me draw your attention to page
9 85 of the constitution. By the way, how long have you been a
10 member?

11 A 36 years.

12 Q Now, page 85 references the business manager, correct?

13 A Yes.

14 Q I'll draw your attention specifically -- strike that.

15 MR. BOREANAZ: I'm going to offer R-5 into evidence.

16 JUDGE GOLDMAN: Okay. Any objection?

17 MR. DURYEA: No objection.

18 JUDGE GOLDMAN: It's received.

19 **(Respondent Exhibit Number 5 Received into Evidence)**

20 Q BY MR. BOREANZ: Page 85 references the business manager.
21 And drawing your attention to subparagraph 3 on that page 85,
22 stating "the business manager shall have the authority to
23 appoint, remove, and supervise stewards." Do you see that?

24 A Yes, I do.

25 Q Now, is that something you were familiar with in your 37

Grace - Direct - Boreanaz

1 years as a member of Local 91?

2 A Absolutely.

3 Q Is that a provision of this constitution, to your
4 knowledge, that Local 91 has followed, save for example in the
5 last five years?

6 A Yes.

7 Q Now, in subparagraph 5, same page, states "the business
8 manager shall keep informed of all contemplated work to be done
9 within the jurisdiction of a local Union, and make pre-job
10 arrangements as may be necessary in order to ensure proper and
11 lawful progress of such work once started and to its
12 conclusion." Do you see that?

13 A Yes, I do.

14 Q Now, do Local 91 members have any responsibility towards
15 following the constitution, as reflected here in Respondent's
16 Exhibit 5?

17 A Yes, they do. They have an obligation as a member of
18 Local 91 put out on a job to the eyes and ears of the Local.
19 But you cannot -- but the leadership cannot physically be
20 everywhere. So any member coming in, actually a first-ear
21 premise has to go through a class that's called "Steward
22 Preparedness." That's how important these provisions are to
23 this International. This is our livelihood. We protect our
24 work. The men out in the field see, hear, and communicate back
25 to us all the time to let us know what's going on, and that we

Grace - Direct - Boreanaz

1 take actions to protect our work.

2 Q Page 87 please. Page 87, subparagraph H references the
3 executive board.

4 A Yes.

5 Q Do you see that?

6 A Yes, I do.

7 Q Executive board elected?

8 A Yep.

9 Q Now, let me draw your attention to page 105, referencing
10 article 11, "Charges, trials, and appeals."

11 A Yes.

12 MR. BOREANZ: Do you have General Counsel 7?

13 JUDGE GOLDMAN: Do you need one for the witness?

14 MR. BOREANZ: Yes. Thank you

15 Q BY MR. BOREANZ: Showing what's been marked as General
16 Counsel 7. Do you see that?

17 A Yes, I do.

18 Q That's in evidence. It's a notice of charges being sent
19 to the recording secretary by Richard Palladino, correct?

20 A Yes.

21 Q Involving charges against Mr. Rob Mantell, true?

22 A Yes.

23 Q Now, as a member of the executive board in 2007, did you
24 play any role in this administration of this charge and the
25 handling of this charge?

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1 A In 2017?

2 Q 2017, yes.

3 A I was the -- I was the -- I sit on the trial board.

4 Q Okay. Now, when we look at page 105, the constitution of
5 Local 91, is it your understanding that article 11 here lays
6 out the procedure by which charges, such as those reflected her
7 in General Counsel 7, are to be administered?

8 A Yes.

9 Q And did you observe each and every one of the required
10 procedures be carried out, as they're listed here, in the
11 constitution, with respect to Ron Mantell's charge, reflected
12 in Respondent's Exhibit 7 --

13 A Yes.

14 Q -- General Counsel 7? For example, did he get a written
15 notice of the charges?

16 A Yes, he did.

17 Q Did he have those sent to his home?

18 A Yes.

19 Q And did they indicate the provisions of the constitution
20 which were alleged to have been violated?

21 A Yes.

22 Q And did you have an occasion to participate in the actual
23 hearing of the charges?

24 A Yes, I did.

25 Q And where did that take place?

Grace - Direct - Boreanaz

1 A It was Local 91 Union hall.

2 Q Do you remember what day of the week it was?

3 A It was a Saturday. Saturday morning at 10 o'clock or 11
4 o'clock.

5 Q Now, paragraph -- page 106, section 4 on page 106 requires
6 that the hearing should be conducted in an "orderly, fair, and
7 impartial manner and shall assure the full presentation of all
8 facts to the trial board." You see that?

9 A Yes, I do.

10 Q Now, did Mr. Mantell have an opportunity to hear the
11 charges at the start of the proceeding that were being lodged
12 against him?

13 A Yes.

14 Q How did that happen?

15 A They were read to him by myself.

16 Q Okay. Did you read them verbatim or did you skip over
17 some words or anything?

18 A I read it word-by-word, dates, everything, addresses.

19 Q Did you explain to Mr. Mantell how the procedure of the
20 day the trial board hearing would play out that morning?

21 A Yes.

22 Q And did you ask all the parties that were there to conduct
23 themselves in a particular way?

24 A Yes. In a --

25 Q What did you ask of the parties?

Grace - Direct - Boreanaz

1 A I asked them to be professional, to be courteous. I also
2 stated that nobody wanted to be there, that this is a tough
3 situation for everybody, and that we just wanted to move
4 through it in an orderly fashion and treat each other with
5 respect, and that we would come to a conclusion based on the
6 facts.

7 Q Also on page 106, the procedures require that "the
8 charging party must first present evidence to substantiate his
9 charges." Do you see that?

10 A Yes.

11 Q Now, was Richard Palladino, during this hearing, required
12 to present first his evidence to sustain the charges?

13 A Yes.

14 Q And after Mr. Palladino did that, was Mr. Mantell afforded
15 an opportunity to ask Mr. Palladino questions?

16 A Yes.

17 Q How was he afforded that opportunity? Who told him that?

18 A I did.

19 Q What did you tell him?

20 A I said once Mr. Palladino was done stating his case, and
21 this was even explained to Ron before that, that he would have
22 an opportunity to question Dick, and then after the fact that
23 Ronnie would be able to defend himself and that Dick would have
24 an opportunity, after Ronnie was done, to ask Ronnie questions.

25 Q Now, after Dick presented his evidence to substantiate the

Grace - Direct - Boreanaz

1 charges, was Ronnie provided an opportunity to defend himself
2 against these charges?

3 A Yes.

4 Q And how did that happen?

5 A How did he defend himself?

6 Q Yeah.

7 A Well, he first and -- I'll give you a couple of examples
8 at what had happened. It was a little bit --

9 MR. DURYEA: This is hearsay?

10 THE WITNESS: No, I was there. Well --

11 JUDGE GOLDMAN: You know, don't. When there's an
12 objection, I'll -- you don't need to --

13 THE WITNESS: Well, it's --

14 JUDGE GOLDMAN: -- have an answer.

15 Well, I'm actually not sure if you -- what you're asking
16 for. Are you asking for a description of what happened? I
17 don't think it's hearsay. I mean I think it's an account of
18 what happened.

19 MR. BOREANZ: I'll ask another question.

20 JUDGE GOLDMAN: You've challenged the process and the
21 events, and you put in evidence that's also hearsay. I mean
22 it's all hearsay. But it -- it may be relevant. What happened
23 at the hearing could be relevant; certainly under your theory
24 it's relevant. So I -- but I thought you were actually asking
25 the manner in which he was allowed to -- I didn't know you were

Grace - Direct - Boreanaz

1 asking for -- I'm not sure the witness understood that. Or
2 maybe I misunderstood it.

3 MR. BOREANZ: I'll ask a better question.

4 JUDGE GOLDMAN: If you're just asking what was the
5 process -- format in which he was allowed to --

6 MR. BOREANZ: I'll ask a better question.

7 JUDGE GOLDMAN: -- ask his questions, then yes.

8 Q BY MR. BOREANZ: Mr. Grace, did you give Mr. Mantell some
9 instructions about his ability to provide his defense after
10 Palladino put on his case?

11 A I -- he -- he had the opportunity to give his defense.

12 Q Did you tell him that?

13 A Oh, absolutely.

14 Q Okay. And did he then speak to the trial board?

15 A Yes.

16 Q All right. Did he read to the trial board anything?

17 A He had written statements that, you know, notes, whatever
18 they would be. I didn't see them, but he was -- had some
19 documentation he was reading off of.

20 Q Did he say things during the trial board other than what
21 he just read from his letter?

22 A Yes, he would elaborate on things.

23 Q Okay. And did any trial board members ask questions of
24 him?

25 A Yeah, throughout the course. Yeah.

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1 Q Okay. He describes the trial board lasting about an hour
2 and a half or thereabouts; is that consistent with your
3 recollection?

4 A I -- I would say.

5 Q All right. And after he presented his defense, did Mr.
6 Palladino get an opportunity to ask Ron questions?

7 A Yes.

8 Q Did that happen?

9 A Yes, he may have asked one or two.

10 Q Now, were there minutes being taken of this trial board?

11 A Yes.

12 Q General Counsel's 12, do you have? No, the 9. It's
13 probably in both.

14 JUDGE GOLDMAN: Maybe I --

15 MR. BOREANZ: You already got your exhibit back?

16 JUDGE GOLDMAN: No. I'll take that back.

17 MR. BOREANZ: GC-9? Does it say GC-9 on the bottom right-
18 hand corner?

19 THE WITNESS: Yeah, GC-9.

20 MR. BOREANZ: Okay.

21 Q BY MR. BOREANZ: All right. Now, these minutes, GC-9, how
22 were they prepared?

23 A Our recording secretary, Kevin Hasley was at the meeting.
24 And they were taken down as -- as the meeting had proceeded.

25 Q Okay. And you've seen these minutes before, have you not?

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Grace - Direct - Boreanaz

1 A Yes.

2 Q Do they accurately represent what occurred --

3 A Yes.

4 Q -- for the most part at the meeting regarding Ron

5 Mantell's charges on April 8th, 2017?

6 A Yes, they were very well-written as a matter of fact.

7 Q Now, after this process of Palladino putting his case on
8 and getting questioned, and Ron putting his case on and being
9 questioned, and through the course of having questions by the
10 trial board, did there come a point in time when the -- the
11 trial board conducted any deliberations?

12 A Yes.

13 Q How did that happen?

14 A We excused ourselves from the Union hall portion of the
15 Union, and went into a separate room, and the entire trial
16 board was present. And we had deliberated maybe for 15, 20
17 minutes.

18 Q So the trial board had some conversations about the
19 testimony?

20 A Yes.

21 Q And did you take a vote?

22 A Yes.

23 Q And do the vote results accurately reflect -- did the vote
24 that you took during this deliberation process, are they
25 accurately reflected in General Counsel's 9 in front of you?

Grace - Direct - Boreanaz

1 A Yes.

2 Q Now, to your knowledge, this handling of this charge
3 against Mr. Mantell, was the processing of that handling of
4 charge consistent with the requirements of the Local 91 local
5 constitution?

6 A Yes.

7 Q Mr. Grace, did the trial board suspend Ron Mantell as a
8 member in good standing because of anything Frank Mantell did
9 that was the subject of Frank Mantell's Board charges earlier
10 on?

11 A Absolutely not.

12 MR. BOREANZ: No further questions.

13 JUDGE GOLDMAN: Your witness.

14 MR. DURYEA: Judge, can we take a break.

15 JUDGE GOLDMAN: Sure.

16 MR. DURYEA: Like two minutes.

17 JUDGE GOLDMAN: Yeah. Let's now recess just a couple
18 minutes. You can sit down if you like.

19 THE WITNESS: I'm sure the chair is more comfortable.

20 MR. BOREANAZ: So I did have one more question, I'm sorry.

21 JUDGE GOLDMAN: Go ahead.

22 Q BY MR. BOREANAZ: The last question I asked you is if the
23 trial board suspended Ron Mantell as a result of his brother
24 Frank Mantell's engaging in protected activity as part of the
25 Facebook posts.

Grace - Direct - Boreanaz

1 Let me ask a similar question. Did the trial board fine

2 Ron Mantell because his brother Frank Mantell engaged any

3 protected activity regarding Facebook or otherwise?

4 A No. We fined -- we had --

5 JUDGE GOLDMAN: No, that's fine.

6 MR. BOREANAZ: No more questions --

7 JUDGE GOLDMAN: Okay.

8 MR. BOREANAZ: -- at this time. There was a fine --

9 JUDGE GOLDMAN: Oh, yeah, it's -- go ahead. Your witness.

10 MR. DURYEA: Yes.

11 CROSS-EXAMINATION

12 Q BY MR. DURYEA: So Richard Palladino filed the charge,
13 correct?

14 A Yes.

15 Q So you were saying that -- you testified that nobody
16 wanted to be there, but Mr. Palladino wanted to be there. He
17 filed the charge.

18 A I said the trial board didn't want to be there.

19 Q So are you aware of anyone else being charged for what Ron
20 Mantell was charged for?

21 A Not -- no. Not in my years.

22 Q And you --

23 A I'm not -- I'm not certain of that. I'm not sure.

24 JUDGE GOLDMAN: Well, you're not aware?

25 THE WITNESS: I'm not aware.

Grace - Cross - Duryea

1 JUDGE GOLDMAN: I don't want to put words in your mouth,

2 but --

3 THE WITNESS: Right. It's that may --

4 Q BY MR. DURYEA: Do you as a member of the executive board,
5 do you attend all disciplinary hearings?

6 A In the years that I've been on, yes.

7 Q And how long has that been?

8 A Thirteen years.

9 Q So in that time, nobody has been charged for what Ron
10 Mantell was charged for?

11 A No. No.

12 Q So you said that Mr. Palladino asked some questions of
13 Ron Mantell. What questions did he ask?

14 A Pretty much it just had to pertain to working on the job
15 without having the schooling and that there should have been
16 communication. So lack of communication.

17 JUDGE GOLDMAN: Can you hear? Make sure to keep your
18 voice up --

19 THE WITNESS: Oh, I'm sorry.

20 JUDGE GOLDMAN: -- because there's not a microphone.

21 THE WITNESS: Let me pull this chair up a little bit.

22 JUDGE GOLDMAN: Well, that doesn't amplify. It just
23 records. So keep it up.

24 Q BY MR. DURYEA: So the trial board voted on the -- on Ron
25 Mantell's guilt; is that correct?

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Grace - Cross - Duryea

1 A Yes.

2 Q And then they assessed the penalty --

3 A Yes.

4 Q -- for that? And that penalty was a six-month suspension
5 and a 500 dollar fine?

6 A Yes.

7 Q Why was that the penalty?

8 A That's the penalty that we came up with. That was our
9 decision.

10 Q But why did you come up with that penalty?

11 A Because it's not a harsh penalty. It's two day's pay.
12 Six months' suspension doesn't mean he can't work, it means
13 that he can't attend Union meetings. The penalty was fair. In
14 our discretion, the penalty was fair.

15 Q Are you saying that during the six months' suspension that
16 Ron was -- would still -- Ron Mantell still would have been
17 able to get jobs through the referral list?

18 A He could still get referral work. It doesn't stop him
19 from going to work. It stops him from attending Union meetings
20 for six months, which would be six meetings.

21 Q And that's the only ramification for the suspension?

22 A Yeah.

23 Q Not being able to attend Union meetings?

24 A Yeah.

25 MR. DURYEA: No more questions.

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Grace - Cross - Duryea

1 JUDGE GOLDMAN: Okay. Thank you. You're excused.

2 THE WITNESS: Thank you.

3 JUDGE GOLDMAN: Give that back to counsel.

4 THE WITNESS: Yeah.

5 MR. BOREANAZ: Can I have a brief recess, Judge?

6 JUDGE GOLDMAN: Sure. All right. Let's take a
7 five-minute break, and a recess. Off the record.

8 (Off the record at 1:23 p.m.)

9 JUDGE GOLDMAN: Your witness.

10 MR. BOREANAZ: Richard Palladino.

11 JUDGE GOLDMAN: Have a seat. Raise your right hand.

12 Whereupon,

13 RICHARD PALLADINO

14 having been duly sworn, was called as a witness herein and was
15 examined and testified as follows:

16 JUDGE GOLDMAN: Proceed.

17 DIRECT EXAMINATION

18 Q BY MR. BOREANAZ: Mr. Palladino, will you spell your last
19 name, please.

20 A P-A-L-L-A-D-I-N-O.

21 Q And how long have you been a business manager?

22 A About ten years.

23 Q And you heard Mr. Connolly say that you had -- he ran for
24 election and you beat him for business manager?

25 A Correct.

Palladino - Direct - Boreanaz

1 Q Now, from November 2015 to the present, have you by
2 operation of the nonexclusive hiring hall at Local 91 refused
3 to refer Ron Mantell from its out of work list?

4 A No.

5 Q Have you, as business manager, caused or refused anyone at
6 the hall to not refer Ron Mantell out of the hall -- through
7 the hiring hall out of work list?

8 A No.

9 Q Now, in November 2016, you heard that Mr. Mantell
10 described a conversation you and he had in the back of the
11 Union hall. Do you remember that testimony?

12 A Yes.

13 Q Now, did you threaten Ron Mantell that if he went and
14 filed charges with the board that you would file internal Union
15 charges against him?

16 A No.

17 Q Now, you did file charges against him in April of 2017; is
18 that accurate?

19 A I think so, yes.

20 Q Okay. All right. Let me show you -- I'll show you
21 General Counsel 7. The date of the charges are March 3rd,
22 2017. Those are charges against --

23 A Yes. Yes.

24 Q -- Mr. Ron Mantell?

25 A Yes.

Palladino - Direct - Boreanaz

1 Q Okay. Did you file these charges reflected here in
2 General Counsel 7 against Ron Mantell because Frank Mantell did
3 anything with respect to his board charge in 2015?

4 A No.

5 Q Why did you file the charges against Ron Mantell as
6 reflected here in General Counsel 7?

7 A Well, I think it needed to happen.

8 Q Okay. Can you explain the importance of your -- strike
9 that. Let me show you the constitution, Respondent's Exhibit 5.

10 MR. BOREANAZ: And is it all right with Your Honor if I
11 could just stand over his shoulder for just a brief moment?

12 JUDGE GOLDMAN: Yeah, briefly.

13 Q BY MR. BOREANAZ: Showing you what's been marked as
14 Respondent's Exhibit 5. It's in evidence. And draw your
15 attention to page 85, which is referenced to the business
16 manager and his or her obligations and duties. Do you see
17 that?

18 A Yes.

19 Q Is one of the duties and obligations of the business
20 manager to know what's going on in your jurisdiction with
21 respect to work?

22 A Yes.

23 Q And is it your responsibility as business manager to
24 enforce the collective bargaining agreement signed between your
25 Union and the employers?

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Palladino - Direct - Boreanaz

1 A Yes.

2 Q And is the main method in which you carry out those duties
3 through your appointment and assignment of job stewards?

4 A Correct. Pretty much, yes.

5 Q And the secondary method of that is by virtue of
6 communicating with your members on job sites?

7 A Correct.

8 Q Now, you indicated that you filed charges against Ron
9 Mantell reflected in General Counsel 7 because you thought it
10 had to be done, correct?

11 A Correct.

12 Q And did you impose a suspension of his membership as a
13 result of you bringing these charges?

14 A No.

15 Q Did you impose any fine to Mr. Mantell as a result of the
16 charges that you -- that you brought here in General Counsel 7?

17 A No.

18 Q Mr. Palladino, did you cause to change the Union's
19 practice of posting the updated out of work list because Ron
20 Mantell engaged in any protected activity?

21 A Absolutely not.

22 Q Did you cause Mario Neri to refuse to allow Ron Mantell to
23 view the Union's out of work list?

24 A No.

25 MR. BOREANAZ: I have no further questions.

Palladino - Cross - Duryea

1 JUDGE GOLDMAN: Okay. Your witness.

2 MR. DURYEA: Just a moment, Your Honor.

3 **CROSS-EXAMINATION**

4 Q BY MR. DURYEA: So you're aware of the fact that Ron
5 Mantell has not been referred from the Union hall since
6 November of -- since November of 2015; is that correct?

7 A I'm aware of that.

8 Q And prior to that date, Ron Mantell was referred out
9 regularly; is that correct?

10 MR. BOREANAZ: I'm going to object to the term "regularly"
11 and ask that the witness be given clarification of what that
12 means.

13 JUDGE GOLDMAN: Well, I don't know that he needs it. I
14 mean, the witness can handle it.

15 MR. BOREANAZ: I'll withdraw it then.

16 JUDGE GOLDMAN: Can you answer that? Ask it again.

17 THE WITNESS: And your question is?

18 Q BY MR. DURYEA: Prior to November of 2015, Ron Mantell was
19 referred out a lot for --

20 A "Referred out", you're referring that we send out? Is
21 that what you're referring?

22 Q That's correct.

23 A That he didn't get his own job? He might have got his own
24 job.

25 JUDGE GOLDMAN: But he's asking you a different question,

Palladino - Cross - Duryea

1 right? You didn't -- finish the question.

2 MR. DURYEA: Yeah, yeah.

3 Q BY MR. DURYEA: I'm asking you prior to November 2015, did
4 you refer Ron Mantell out?

5 A No.

6 Q You never did before November?

7 A I didn't say never. I said I just didn't refer him out a
8 lot. When we could, we did. As his number come up, if we
9 could find a job for him, we did.

10 Q Showing you General Counsel Exhibit 2. This is a document
11 showing for the Union fiscal years the number of hours that Ron
12 Mantell was credited with. Do you see that the for years
13 preceding he's got 700 hours, thousand hours, something in the
14 hundreds or up to thousands of hours in the years preceding
15 November of 2015?

16 A I see it.

17 Q Do you see it?

18 A Yup.

19 Q Do you have any reason to doubt that Ron Mantell worked
20 those hours?

21 A No. No. Those hours are accurate.

22 Q So during those years when he was racking up those sorts
23 of hours, was he referred out by you for work?

24 A I'd have to look up and see, because I don't remember
25 referring him out. My brother might have. My brother was an

Palladino - Cross - Duryea

1 assistant at that time. My brother may have.

2 MR. BOREANAZ: When you're talking about referred out, are
3 you talking off the referral list?

4 MR. DURYEA: Yes. Off of the referral list.

5 THE WITNESS: I wouldn't know. I'd have to take a look
6 and see.

7 Q BY MR. DURYEA: Do you have any reason to -- do you have
8 any reason to believe that during, say, the prior five years
9 that are listed on there through fiscal year 2016 that Ron
10 Mantell always got his own jobs? Do you have any reason to
11 believe that?

12 A I had no reason to believe that he didn't get some of his
13 own jobs and be sent out by the hall. I -- I would have no way
14 of knowing that without looking at the placement sheets that
15 you went over with Mario.

16 MR. DURYEA: Did you do that?

17 MR. BOREANAZ: The microphone, did you move that? Oh, no,
18 it's down there.

19 JUDGE GOLDMAN: No. Are you okay? Court reporter? She
20 can hear it. We're good.

21 MR. DURYEA: Was I out of the room when you did that? Was
22 I out of the room when you did that?

23 UNIDENTIFIED SPEAKER: No. That was just a question.

24 Q BY MR. DURYEA: So thinking back to events involving Frank
25 Mantell and the Facebook postings, those postings bothered you,

1 correct?

2 A If your name was disdained (sic) after 57 years, would you
3 be upset?

4 Q I'm asking you --

5 A I'm asking you.

6 Q -- what you said.

7 JUDGE GOLDMAN: No. No. Don't do that. I know it's -- I
8 know there is a lot of strong feelings, but just answer his
9 question.

10 Q BY MR. DURYEA: So were you upset over --

11 A Well, certainly. He went after my reputation after 57
12 years with lies. Would you be upset? Certainly.

13 Q And did it bother you that he filed a charge with the
14 NLRB?

15 A No.

16 Q That --

17 A Not at all.

18 Q That didn't bother you?

19 A No. It's part of the process. We came here, did our job.

20 Q So the Facebook posts bothered you, but the board process
21 that was all about Frank Mantell's Facebook posts, are you
22 saying that didn't bother you?

23 A I never said that. Is that a question?

24 Q The question is, did the fact that a labor board case was
25 brought regarding Frank Mantell's Facebook posts and you went

Palladino - Cross - Duryea

1 through the entire board process and got -- Frank Mantell got a
2 favorable decision from the Board, did that bother you?

3 A Not at all.

4 MR. BOREANAZ: Was he upset at the Board, is that the
5 question?

6 MR. DURYEA: No, that's not the question.

7 JUDGE GOLDMAN: I got the question. But it's -- it has
8 very limited -- I mean, no one likes to lose a case but that's
9 the easy part is that there was a conflict between Frank and
10 the local that resulted in a Board case. We know that.

11 I'm going to ask you something, though, because counsel
12 asked about this document. These hours, these would be -- this
13 would result -- this would be work done for any laborer's
14 contractor?

15 THE WITNESS: Anybody's signatory, yes, sir.

16 JUDGE GOLDMAN: Okay. Whether it was referred by the --
17 whether they got the job on their own or got the job --

18 THE WITNESS: Through the hall.

19 JUDGE GOLDMAN: -- through the hall.

20 THE WITNESS: Anyway that you can get it.

21 JUDGE GOLDMAN: Right. Okay.

22 Q BY MR. DURYEA: So is it your testimony that prior to
23 November 2015 Ron Mantell got all of his own work and didn't
24 get any --

25 A I didn't say that.

Palladino - Cross - Duryea

1 Q -- referrals from the hall?

2 A I said I would have to look at the sheets. I'm sure it
3 was a mix.

4 Q You're sure it was mixed between getting --

5 A It's probably --

6 Q -- his own work --

7 A That's probably not even a good answer. I'd have to take
8 a look and see. He has the capability of doing both, working
9 through the hall or getting his own job.

10 Q Do you have any reason to believe that up until, say, the
11 five years prior to November of 2015 that Ron Mantell did get
12 referrals out from the Union?

13 A No, not at all.

14 Q You have no reason to doubt that?

15 A No reason to doubt it.

16 JUDGE GOLDMAN: Doubt it or believe it? I lost your
17 question. I think -- well, you don't know. I mean, the
18 question was -- I think you first asked whether he believed it,
19 had any reason to believe it and then whether he had any reason
20 to doubt it.

21 MR. DURYEA: Oh, let me rephrase.

22 JUDGE GOLDMAN: All right.

23 MR. DURYEA: Let me ask it again more clearly.

24 JUDGE GOLDMAN: I'm not sure one excludes the other.

25 MR. BOREANAZ: Yeah, I mean, I would stip it's a

1 possibility that he got --

2 JUDGE GOLDMAN: Well, you know, that's what we -- I mean,
3 I think the witness has sort of declared that he would have to
4 look at other records to know. Unless you're -- I mean, the
5 way you asked the question, I don't really know which question
6 he answered but -- so maybe go ahead and ask it again.

7 Q BY MR. DURYEA: So it's possible that before November
8 2015, say, for the five years before that that Ron Mantell was
9 getting referrals from the Union?

10 A Correct.

11 Q So what changed in November of 2015 that led to Ron
12 Mantell getting zero referrals from the hall from November 2015
13 until today?

14 A I have no idea. Obviously he's not being asked for and we
15 didn't have work for him. So there must be a reason that
16 nobody is requesting him, otherwise he would have gone to work.

17 Q Is that the only way people get -- members get referred
18 out is if they're asked for by name?

19 A No. Or if his number come up and there was an opportunity
20 to send him, then we would have referred him.

21 Q And you're saying that that never happened --

22 A Not to my knowledge.

23 Q -- or about since November of 2015?

24 A We just experienced the worst two years that we've had in
25 22 years. We have a number of laborers that have fewer hours

1 than Ron Mantell.

2 Q Well --

3 A Do each of them have the same complaint? Are they
4 entitled to the same remedy? We have a lot of people that we
5 take care of. Ron Mantell is not the only one that's hurting
6 for time. There's guys that have absolutely no unemployment,
7 no insurance, no nothing.

8 Now, if there was a way to help them, do you think that I
9 would be sitting here if I could be helping them? That's what
10 I'm hired for. Ron just happens to catch a couple bad years
11 and there's not a thing that I can do about it.

12 Q And of course you know that Ron Mantell is Frank Mantell's
13 brother?

14 A What's that got to do with anything?

15 Q Well --

16 A What's that got to do with Ron? You keep bringing Frank
17 Mantell into it. And I told you three times, Frank Mantell has
18 nothing to do with Ron Mantell. Ron Mantell will tell you that
19 he's got nothing to do with Frank and we treat him that way.
20 So your insistence to try to bring Frank Mantell back into this
21 case, you're wasting your time.

22 MR. FEUERSTEIN: Can we have a minute, please?

23 JUDGE GOLDMAN: Sure. We'll take five minutes. Off the
24 record. You're welcome to step down if you like.

25 THE WITNESS: Oh, thanks, Your Honor.

Mantell - Direct - Duryea

1 (Off the record at 1:51 p.m.)

2 JUDGE GOLDMAN: Your witness.

3 MR. DURYEA: I have no further questions at this moment.

4 JUDGE GOLDMAN: Anything else?

5 MR. BOREANAZ: No follow up.

6 JUDGE GOLDMAN: All right. Thank you. You're excused.

7 Okay. Anything else?

8 MR. BOREANAZ: We have no more witnesses.

9 JUDGE GOLDMAN: Okay. Respondent rests?

10 MR. BOREANAZ: Yes.

11 JUDGE GOLDMAN: Okay. Any rebuttal?

12 MR. DURYEA: Yeah. I have a rebuttal witness.

13 JUDGE GOLDMAN: Okay.

14 MR. DURYEA: Ron Mantell.

15 MR. MANTELL: Do I have to be sworn again?

16 JUDGE GOLDMAN: Yeah. I'll go ahead and swear you again.

17 Raise your right hand.

18 Whereupon,

19 RON MANTELL

20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:

22 THE WITNESS: Absolutely.

23 JUDGE GOLDMAN: Okay. Proceed.

24 DIRECT EXAMINATION

25 Q BY MR. DURYEA: Did you hear earlier Mario Neri's

Mantell - Direct - Duryea

1 testimony about a conversation with you in 2013 in which you
2 told -- in which you said you were not going to take any
3 one-day jobs? Did you hear that testimony?

4 A Yes, I did.

5 Q Did you ever have a conversation with Mr. Neri about not
6 taking one-day jobs?

7 A Never.

8 Q Did you have -- ever have a conversation about not taking
9 one-day jobs with Mr. Palladino?

10 A Never.

11 Q Since 2013, have you worked one-day jobs?

12 A Yes.

13 Q Have you ever been -- have you ever turned down a one-day
14 job?

15 A No --

16 Q Since November -- since 2013, have you turned down any
17 one-day jobs?

18 A No, I did not because I know being a laborer that
19 sometimes, as Mario said, the contractor calls and asks for a
20 guy for one day and I know that. That if you go on the job and
21 work hard that sometimes if they have extra work, they'll keep
22 you on the job. And that has happened for me in the past, a
23 lot of times.

24 Q So you accepted one-day jobs?

25 A Yes. Because it can lead into something else.

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Hearing Transcript, Volume II, Dated October 12, 2017 [Pages 194-312]. 309

Mantell - Direct - Duryea

1 Q So when did you first learn that the Union was not
2 referring you out for one-day jobs?

3 A Today.

4 Q There was also a conversation that Mr. Neri talked about
5 that had to do with busting and whether or not you would accept
6 a busting job.

7 A Yes, I heard it.

8 Q Did you ever say that you wouldn't accept a busting job?

9 A Never.

10 Q Is busting a job that you've done before?

11 A Oh, yes, many times. Actually, a few years ago I did in
12 Lewiston for about eight weeks chipping concrete.

13 Q And would you accept a busting job?

14 A Yes. I'm a laborer. I'll accept any job they offer me.

15 MR. DURYEA: No more questions.

16 JUDGE GOLDMAN: All right. Follow up?

17 CROSS-EXAMINATION

18 Q BY MR. BOREANAZ: Mr. Mantell, can you pass a drug test?

19 A Yes, I passed one last year.

20 Q Okay.

21 MR. DURYEA: Objection, Your Honor.

22 JUDGE GOLDMAN: It's follow up.

23 Q BY MR. BOREANAZ: Your testimony here on
24 redirect involved --

25 JUDGE GOLDMAN: Do you want a ruling?

Mantell - Cross - Boreanaz

1 MR. BOREANAZ: What?

2 JUDGE GOLDMAN: I thought you were talking to me.

3 MR. FEUERSTEIN: I'm talking to Eric.

4 JUDGE GOLDMAN: Okay.

5 MR. FEUERSTEIN: I'm sorry.

6 Q BY MR. BOREANAZ: You had an eight-week job busting?

7 A Six to eight weeks, I believe.

8 Q And who was that with, what contractor?

9 A That was Edbauer Construction, which I was sent for a
10 one-day job and it turned into six to eight weeks.

11 Q Is it your testimony that Mario Neri is lying about what
12 you said to him?

13 A Yes.

14 MR. BOREANAZ: No further questions.

15 JUDGE GOLDMAN: Okay. Anything? Thank you. You're
16 excused.

17 Okay. That's it. We've come to the end. Briefs due
18 November 16th. If it is more than 20 pages, please have a
19 table of contents.

20 And anything before we close the hearing?

21 MR. BOREANAZ: Just one second, please.

22 JUDGE GOLDMAN: Let's go off the record.

23 (Counsel confer)

24 JUDGE GOLDMAN: Okay. With that, we'll close the hearing.

25 Thank you for your presentations. The hearing is closed.

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Hearing Transcript, Volume II, Dated October 12, 2017 [Pages 194-312]. 311

1 MR. DURYEA: Thank you.

2 MR. BOREANAZ: Thank you, Judge.

3 (Whereupon, the hearing in the above-entitled matter was closed
4 at 2:02 p.m.)

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C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 3, Case Numbers

4

03-CB-196682, 03-CB-201412, Laborers International Union of

5

North America, Local Union of North America, Local Union No.

6

91, (Scrufari Construction Co., Inc.), and Ronald J. Mantell,

7

and Scrufari Construction Co., Inc., at the Buffalo Hearing

8

Room, Suite 630, 130 S. Elmwood Avenue, Buffalo, New York

9

14202, on Thursday, October 12, 2017, 9:32 a.m. was complete,

10

and true and accurate transcript that has been compared to the

11

reporting or recording, accomplished at the hearing, that the

12

exhibit files have been checked for completeness and no

13

exhibits received in evidence or in the rejected exhibit files

14


are missing.

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DAVETTE REPOLA

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Official Reporter

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325

**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRIFARI CONSTRUCTION CO., INC.)**

and

**Cases 03-CB-196682
03-CB-201412**

RONALD J. MANTELL, an Individual

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE
OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 03-CB-196682 and Case 03-CB-201412, which are based on charges filed Ronald J. Mantell, an Individual (R. Mantell) against Laborers' International Union of North America, Local Union No. 91 (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges Respondent has violated the Act as described below.

I

(a) The charge in Case 03-CB-196682 was filed by R. Mantell on April 12, 2017, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in Case 03-CB-196682 was filed by R. Mantell on April 24, 2017, and a copy was served on Respondent by U.S. mail on the same date.

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

(c) The charge in Case 03-CB-201412 was filed by R. Mantell on June 27, 2017, and a copy was served on Respondent by U.S. mail on the same date.

(d) The first amended charge in Case 03-CB-201412 was filed by R. Mantell on August 16, 2017, and a copy was served on Respondent by U.S. mail on the same date.

II

(a) At all material times, Scrufari Construction Co. Inc. (the Employer), has been a corporation with an office and place of business in Niagara Falls, New York (the Employer's facility), and has been a general contractor in the construction industry doing commercial construction.

(b) At all material times, Council of Utility Contractors, Inc., The Independent Builders of Niagara County and Associated General Contractors of America, New York State Chapter, Inc., collectively referred to as the Associations, have been organizations composed of various employers, including Scrufari Construction Co., Inc., engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Respondent.

(c) Annually, the employer-members of each of the Associations, in the course of their business operations described above in paragraph II(a), collectively, purchase and receive goods valued in excess of \$50,000 directly from points outside the States wherein the employer-members are located.

III

At all material times, the Employer and the employer-members of the Associations have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

IV

At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

V

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Richard Palladino	–	Business Manager
William Grace	–	President
Kevin Haseley	–	Recording Secretary
Dave Bellreng	–	Vice President
Paul Hoyt	–	Executive Board Member
Anthony Ventura	–	Executive Board Member
Don Paolini	–	Auditor
Bruce Stenzel	–	Auditor
Mario Neri	–	Respondent employee

VI

(a) Since about April 1, 2012, the Associations and Respondent have entered into and since then have maintained collective-bargaining agreements that contain language that allows Respondent to be a non-exclusive source of referrals of employees for employment with employer-members of each of the Associations.

**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

(b) On February 7, 2017, the National Labor Relations Board issued a decision finding that Respondent violated Section 8(b)(1)(A) of the Act by removing employee-member Frank J. Mantell from Respondent's out-of work referral list from October 8, 2015 through November 19, 2015 due to his protected concerted activity of posting criticisms of Respondent and its business manager, Richard Palladino, on Facebook.

(c) From about November 2015, a more precise date unknown to the General Counsel but within the knowledge of Respondent, and continuing thereafter, Respondent, by operation of its non-exclusive hiring hall, has refused to refer R. Mantell from its out-of-work referral list.

(d) In about November 2016, a more precise date unknown to the General Counsel but within the knowledge of Respondent, Respondent, by Business Manager Richard Palladino, threatened R. Mantell with internal union charges if the employee-member filed charges with the Board.

(e) About March 3, 2017, Respondent, by Business Manager Richard Palladino, filed internal union charges against R. Mantell.

(f) About April 8, 2017, Respondent fined R. Mantell and suspended him as a member in good standing.

(g) Respondent engaged in the conduct described above in paragraphs VI(c), (d), (e) and (f) because R. Mantell's brother, Frank Mantell, engaged in the protected concerted conduct described above in paragraph VI(b).

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

VII

(a) On about June 26, 2017, R. Mantell engaged in protected concerted conduct by investigating the referral of two individuals below him on Respondent's out-of-work list.

(b) On about June 27, 2017, Respondent, by employee Neri, refused to allow R. Mantell to view Respondent's out-of-work list.

(c) In about July 2017, a more precise date unknown to the General Counsel but within the knowledge of Respondent, Respondent changed its practice by posting its updated out-of-work list weekly instead of daily.

(d) Respondent engaged in the conduct described above in paragraphs VII(b) and (c) because R. Mantell engaged in the protected concerted conduct described above in paragraph VII(a).

VIII

By the conduct described above in paragraph VI(c), (d), (e), and (f) and paragraph VII(b) and (c), Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

IX

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs VI and VII the General Counsel seeks an order requiring Respondent, inter alia, to preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

WHEREFORE, as an additional remedy for the unfair labor practices alleged above in paragraph VI and VII the General Counsel seeks an order requiring that the Respondent reimburse the discriminatee for all search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

WHEREFORE, in order to fully remedy the unfair labor practices alleged above in paragraph VI and VII the General Counsel seeks an order requiring that the discriminatee be made whole, including reasonable consequential damages incurred as a result of the Respondent's unlawful conduct.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before September 6, 2017, or postmarked on or before September 5, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a consolidated complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

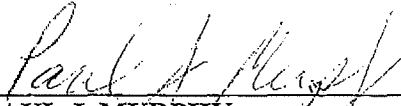
PLEASE TAKE NOTICE THAT on October 11, 2017 at 10:00 a.m., in the Hearing Room at the Niagara Center Building, 130 South Elmwood Avenue, Suite 630, Buffalo, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are

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**General Counsel Exhibit 1(L) - Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated August 23, 2017.**

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York, this 23rd day of August, 2017.



PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Attachments

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General Counsel Exhibit 1(N) - Answer of Respondent, Dated September 6, 2017.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)

ANSWER

Cases 03-CB-196682
03-CB-201412

and

RONALD J. MANTELL, an Individual

Respondent, Laborers' International Union of North America, Local Union No. 91, by its attorneys, Lipsitz Green Scime Cambria LLP, Robert L. Boreanaz, of counsel, answers the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs I(a), I(b), I(c) and I(d);
2. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs II (a), II (b) and II(c);
3. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph III;
4. Admits the allegations set forth in paragraph IV;
5. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph V;
6. Admits the allegations set forth in paragraphs VI(a) and VI(b); denies the allegations set forth in paragraphs VI (c), VI (d), VI(e), VI(f) and VI(g);
7. Denies the allegations set forth in paragraphs VII(a), VII(b), VII(c) and VII(d);
8. Denies the allegations set forth in paragraph VIII; and

General Counsel Exhibit 1(N) - Answer of Respondent, Dated September 6, 2017.

9. Denies the allegations set forth in paragraph IX.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The charges in the Complaint are barred by the Statute of Limitations.

SECOND AFFIRMATIVE DEFENSE

The actions of both the Charging Party and the Respondent are subject to and involve an entirely internal union matter as such the Labor-Management Reporting and Disclosure Act or LMRDA (see 29 U.S.C. § 260-401) applies and the National Labor Relations Act does not.

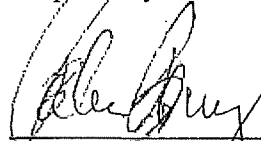
THIRD AFFIRMATIVE DEFENSE

The Charging Party violated the Respondent's Constitution, together with his obligations as a member, and as a result, was properly penalized, including suspension of his membership.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed in its entirety.

Dated: September 6, 2017
Buffalo, New York

Respectfully submitted,



Robert L. Boreanaz, Esq.
Lipsitz Green Scime Cambria LLP
Attorneys for Respondent
42 Delaware Avenue, Suite 120
Buffalo, NY 14202-3924
(716) 849-1333 ext. 343
rboreanaz@lglaw.com

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General Counsel Exhibit 1(N) - Answer of Respondent, Dated September 6, 2017.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)

**CERTIFICATE
OF SERVICE**

Cases 03-CB-196682
03-CB-201412

and

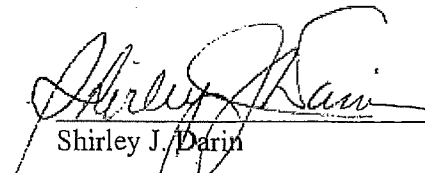
RONALD J. MANTELL, an Individual

I, Shirley J. Darin, hereby certify that on September 6, 2017, I electronically filed the foregoing Answer with the National Labor Relations Board and a copy was served upon:

Ronald J. Mantell
8030 Ashwood Drive
Niagara Falls, NY 14304

Thomas Warda, Vice President
3925 Hyde Park Boulevard
Niagara Falls, NY 14305-1701

by depositing a true copy of same enclosed in a postage-paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Shirley J. Darin

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**General Counsel Exhibit 1(O) - Amendment to Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated September 25, 2017.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)**

**Cases 03-CB-196682
03-CB-201412**

and

RONALD J. MANTELL, an Individual

**AMENDMENT TO ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on August 23, 2017 is amended as follows:

Change paragraph II(b) to read as follows:

II

(b) - At all material times, Council of Utility Contractors, Inc.; The Independent Builders of Niagara County; Associated General Contractors of America, New York State Chapter, Inc.; and The Building Industry Employer's Association of Niagara County New York, Inc., collectively referred to as the Associations, have been organizations composed of various employers, including the Employer, engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Respondent.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent must file an answer to the above amendment

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General Counsel Exhibit 1(O) - Amendment to Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, Dated September 25, 2017.

to consolidated complaint. The answer must be received by this office on or before October 10, 2017, or postmarked on or before October 8, 2017. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

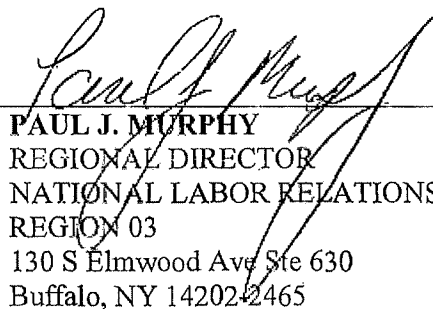
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed,

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**General Counsel Exhibit 1(O) - Amendment to Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing, Dated September 25, 2017.**

or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment,
that the allegations in the amendment to consolidated complaint are true.

DATED at Buffalo, New York, this 25th day of September, 2017.



PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

General Counsel Exhibit 1(R) - Amended Answer of Respondent, Dated October 9, 2017.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)

AMENDED ANSWER

Cases 03-CB-196682
03-CB-201412

and

RONALD J. MANTELL, an Individual

Respondent, Laborers' International Union of North America, Local Union No. 91, by its attorneys, Lipsitz Green Scime Cambria LLP, Robert L. Boreanaz, of counsel, answers the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs I(a), I(b), I(c) and I(d);
2. Admits the allegations set forth in paragraphs II (a), II (b) and II(c);
3. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph III;
4. Admits the allegations set forth in paragraph IV;
5. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph V. Admits that starting on January 1, 2017, said individuals held the Union office adjacent to their name;
6. Admits the allegations set forth in paragraphs VI(a) and VI(b); denies the allegations set forth in paragraphs VI (c), VI (d), VI(e), VI(f) and VI(g);
7. Denies the allegations set forth in paragraphs VII(a), VII(b), VII(c) and VII(d);
8. Denies the allegations set forth in paragraph VIII; and

IR

General Counsel Exhibit 1(R) - Amended Answer of Respondent, Dated October 9, 2017.

9. Denies the allegations set forth in paragraph IX.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The charges in the Complaint are barred by the Statute of Limitations.

SECOND AFFIRMATIVE DEFENSE

The actions of both the Charging Party and the Respondent are subject to and involve an entirely internal union matter as such the Labor-Management Reporting and Disclosure Act or LMRDA (see 29 U.S.C. § 260-401) applies and the National Labor Relations Act does not.

THIRD AFFIRMATIVE DEFENSE

The Charging Party violated the Respondent's Constitution, together with his obligations as a member, and as a result, was properly penalized, including suspension of his membership.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed in its entirety.

Dated: October 9, 2017
Buffalo, New York

Respectfully submitted,

s/ Robert L. Boreanaz
Robert L. Boreanaz, Esq.
Lipsitz Green Scime Cambria LLP
Attorneys for Respondent
42 Delaware Avenue, Suite 120
Buffalo, NY 14202-3924
(716) 849-1333 ext. 343
rboreanaz@lglaw.com

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General Counsel Exhibit 1(R) - Amended Answer of Respondent, Dated October 9, 2017.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)

**CERTIFICATE
OF SERVICE**

Cases 03-CB-196682
03-CB-201412

and

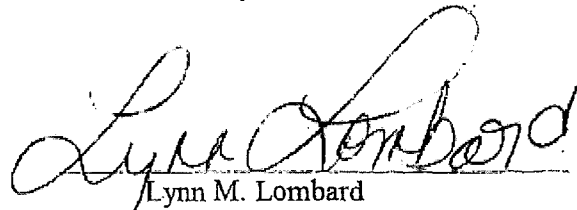
RONALD J. MANTELL, an Individual

I, Lynn M. Lombard, hereby certify that on October 9, 2017, I electronically filed the foregoing Amended Answer with the National Labor Relations Board and a copy was served upon:

Ronald J. Mantell
8030 Ashwood Drive
Niagara Falls, NY 14304

Thomas Warda, Vice President
3925 Hyde Park Boulevard
Niagara Falls, NY 14305-1701

by depositing a true copy of same enclosed in a postage-paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Lynn M. Lombard

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General Counsel Exhibit 2 - R. Mantell Accredited Pension Hours.

DATE: 4/12/2017

LABORERS LOCAL UNION NO 91
 PENSION PLAN
 4500 WITMER INDUSTRIAL ESTATES
 NIAGARA FALLS, NY 14305

MANTELL, RONALD J
 8030 ASHWOOD DRIVE
 NIAGARA FALLS, NY 14304

DEAR MEMBER:

THIS IS A RECORD OF YOUR PENSION CREDIT AND VESTING CREDIT HISTORY

THE CREDITS ARE SUBJECT TO VERIFICATION AND FINAL APPROVAL BY THE
 BOARD OF TRUSTEES

SINCERELY YOURS,

WILLIAM GRACE
 FUND ADMINISTRATOR

YEAR	**HOURS**	**PENSION CREDIT**		**VESTING CREDIT**	
		CURRENT	TOTAL	CURRENT	TOTAL
1990	54 00	054	054	000	000
1991	1364 13	1 364	1 418	1 000	1 000
1992	722 50	723	2 141	000	1 000
1993	766 25	766	2 907	000	1 000
1994	1436 75	1 437	4 344	1 000	2 000
1995	781 50	782	5 126	000	2 000
1996	854 00	854	5 980	000	2 000
1997	972 75	973	6 953	000	2 000
1998	968 50	969	7 922	000	2 000
1999	1022 75	1 023	8 945	1 000	3 000
2000	999 25	999	9 944	000	3 000
2001	975 25	975	10 919	000	3 000
2002	1292 00	1 292	12 211	1 000	4 000
2003	1101 25	1 101	13 312	1 000	5 000
2004	1160 50	1 161	14 473	1 000	6 000
2005	914 25	914	15 387	000	6 000
2006	2063 50	2 063	17 450	1 000	7 000
2007	1320 25	1 320	18 770	1 000	8 000
2008	1122 75	1 123	19 893	1 000	9 000
2009	1142 25	1 142	21 035	1 000	10 000
2010	717 75	718	21 753	000	10 000
2011	585 50	586	22 339	000	10 000
2012	1090 50	1 091	23 430	1 000	11 000
2013	738 25	738	24 168	000	11 000
2014	755 00	755	24 923	000	11 000
2015	1121 00	1 121	26 044	1 000	12 000
2016	741 25	741	26 785	000	12 000

G-C EX. 2

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General Counsel Exhibit 2 - R. Mantell Accredited Pension Hours.

MANTELL, RONALD J
 8030 ASHWOOD DRIVE
 NIAGARA FALLS, NY 14304

YEAR	**HOURS**	**PENSION CREDIT** CURRENT	TOTAL	**VESTING CREDIT** CURRENT	TOTAL
2017	6 00	006	26 791	000	12 000
VESTED AS OF 2001					
			45/ 5	AGE	
			26 791	POINTS	
			71 791	CREDIT TO 105	

5770SS1 V7R2M0 14Q418

Print Key Output

S10B83CT

09/27/17 08 25 42

Page 1

Display Device
UserGINAAL
GINA

Hours Worked History by Date Worked

MANTELL RONALD J

9/27/17 8 25

Cnt #	Date Worked	Date Received	Employer Name	Ref No	Local Reptd	Home Local	Contrb Rate	Recip Rate	Hours Worked	Hours Credited	Hours To Date	Typ Hrs
47	06212015	07222015	2678 EDBAUER CONSTRUCTION	1000011270	91	91	13 390		152 75	152 75	152 75	
47	06282015	09012015	2678 EDBAUER CONSTRUCTION	1000011358	91	91	13 390		16 00	16 00	168 75	
46	07262015	08212015	3 SCRUFARI CONSTRUCTION CO	1000011323	91	91	13 640		69 50	69 50	238 25	
49	07312015	08212015	1033 FOX FENCE	1000011328	91	91	13 640		32 75	32 75	271 00	
49	08312015	10132015	1033 FOX FENCE	1000011456	91	91	13 640		25 50	25 50	296 50	
49	08312015	10132015	2621 NORTHLAND CONTRACTING I	1000011466	91	91	13 640		191 25	191 25	487 75	
47	08312015	10222015	2721 A-1 LAND CARE INC	1000011503	91	91	13 640		16 00	16 00	503 75	
47	09302015	10222015	2721 A-1 LAND CARE INC	1000011504	91	91	13 640		83 25	83 25	587 00	
47	10312015	12012015	502 YARUSSI CONSTRUCTION INC	1000011591	91	91	13 640		17 50	17 50	604 50	
48	10312015	12012015	2163 PAVILION DRAINAGE SUPPLY	1000011592	91	91	13 640		36 00	36 00	640 50	
46	11302015	12182015	3 SCRUFARI CONSTRUCTION CO	1000011647	91	91	13 640		77 75	77 75	718 25	
46	11302015	12182015	3 SCRUFARI CONSTRUCTION CO	1000011648	91	91	13 640		16 00	16 00	734 25	
6	12012015	12012015	2637 SELF PAYMENT WELFARE	1000011599	91	91	1 000				734 25	
46	02282016	03182016	3 SCRUFARI CONSTRUCTION CO	1000011825	91	91	13 640		7 00	7 00	741 25	

Type of Record

A (I-In & Out A- Active

blank=all)

Beginning Date Worked

06 01 2015

Press Enter For

Ending Date Worked

05 31 2016

Additional

Fund Number

1 WELFARE PLAN

cmd01-return to 1st screen

cmd03-return to previous screen

cmd07-end of job

cmd10-display hours

cmd11 display amounts cmd12 display PAP Amt

FISCAL

GC EX. 3

General Counsel Exhibit 3 - Hours Credited to R. Mantell, Fiscal Year 2016.

344

345

General Counsel Exhibit 4 - 2015-2018 Agreement.

AGREEMENT

Made By and Between

LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA
LOCAL UNION NO. 91
A.F.L. – C.I.O.

AND

THE BUILDING INDUSTRY
EMPLOYER'S ASSOCIATION
OF NIAGARA COUNTY
NEW YORK, INC.

2015-2018



GC EX. 4

General Counsel Exhibit 4 - 2015-2018 Agreement.

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General Counsel Exhibit 4 - 2015-2018 Agreement.

2015-2018 LABORERS' AGREEMENT

AGREEMENT made the 1st day of April, 2015, by and between **LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 91, AFL-CIO** (hereinafter referred to as the "Union") and **THE BUILDING INDUSTRY EMPLOYERS ASSOCIATION OF NIAGARA COUNTY, NEW YORK, INC.** (hereinafter referred to as the "Employer").

WHEREAS, it is the desire of both parties to this Agreement to enter into an agreement which will be for the mutual benefit of said parties and for the purpose of dispensing with future trouble and dispute.

NOW, THEREFORE, this Agreement WITNESSETH, that the parties hereto agree to be bound in their relations, one with the other, for and during the term from the effective day through March 31, 2018, by the following rules and regulations, that is to say:

**ARTICLE I
BOUNDARIES**

The region in which this Agreement is effective includes all of Niagara County, New York.

**ARTICLE II
HOURS OF WORK**

Section 1. (a) Forty (40) hours shall constitute a work week consisting of five (5) days of eight (8) hours each beginning Monday through Friday.

(b) It is recognized that the usual lunch period is from 12:00 o'clock noon to 12:30 o'clock p.m., except in case of an emergency. The privilege of changing the lunch period because of an emergency shall not be abused.

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General Counsel Exhibit 4 - 2015-2018 Agreement.

(c) Men working on a job for ten (10) hours shall be allowed thirty (30) minutes for dinner break without loss of pay.

Section 2. (a) Except on shift work, the work day shall consist of eight (8) hours. Working hours shall start between 6:00 a.m. and 9:00 a.m. with one-half (1/2) hour unpaid lunch. Any other start time shall be by mutual consent of the Contractor and the Union. Start times will not be changed daily.

(b) **SHIFT WORK:** Two (2) or three (3) shifts may be employed in a twenty-four (24) hour period. Permission of the Laborer Union's Business Manager must be had two (2) days prior to operating shift work. The first shift shall commence at 8:00 o'clock a.m. and continue to 4:30 o'clock p.m.; the second shift shall commence at 4:30 o'clock p.m. and continue to 12:30 o'clock a.m.; the third shift shall commence at 12:30 o'clock a.m. and continue to 8:00 o'clock a.m. On each shift the men shall be entitled to one-half (1/2) hour for lunch and on second and third shifts the lunch period shall be without deduction of pay. There shall be approximately an equal number of Laborers employed on each shift.

(c) When shift work is elected by the Employer or is mandated by the job specifications or the customer or the contracting agency, the following premiums apply: The wage rate for the second shift shall be fifteen percent (15%) above the regular rate; for the third shift, the wage rate shall be twenty percent (20%) above the regular rate of wages. On shift work, the first shift shall commence at 8:00 o'clock a.m. and continue to

4:30 o'clock p.m.; the second shift shall commence at 4:30 o'clock p.m. and continue to 12:30 o'clock a.m.; the third shift shall commence at 12:30 o'clock a.m. and continue to 8:00 o'clock a.m.

(d) All work from Saturday 8:00 o'clock a.m. until Monday at 8:00 o'clock a.m. shall be construed as overtime at the double time rate of pay (these hours apply only where shift work is concerned and is not meant to change the regular hours for overtime pay). Any work less than seven (7) hours on the second and third shifts shall be construed as overtime work unless inclement weather or conditions beyond the control of the Employer prevent the work from being carried out. On work such as alterations or repairs to structures and occupied offices where regular prescribed shifts cannot be worked, special provisions may be arranged between the Employer and the Union Business Manager, and the requirement of five (5) consecutive working days will not apply. No Laborer shall be permitted to work more than one (1) shift during a twenty-four (24) hour period except by permission of the Business Manager or his representative. Shift work must be of five (5) consecutive working days duration or the overtime rate shall apply. Shift work shall commence on or about 12:00 o'clock a.m. Monday.

Section 3. HOLIDAYS:

(a) The following days shall be considered paid holidays for members of Laborers Local No. 91, subject to the other conditions outlined in this section: Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

General Counsel Exhibit 4 - 2015-2018 Agreement.

be increased by Two Dollars and Ten Cents (\$2.10) per hour on all jobs except those under construction or bid on or before April 1, 2015. Thereafter and on July 1, 2016 and July 1, 2017, the basic rate of wages shall be increased by One Dollar and Seventy-five Cents (\$1.75). All increases on July 1, 2015, July 1, 2016, and July 1, 2017 shall be the amount stated herein, less any amount allocated to the Pension Fund and/or Health and Welfare Fund and/or a deduction in accordance with Article IV section 8 of this Agreement.

The rate of wages for Building Watchman during the term of this Agreement shall be Thirteen Dollars (\$13.00) per hour.

Laborers performing Multi-trade Tender work shall be paid the basic rate of wages for employment during regular working hours.

Laborers performing Rehabilitation work shall be paid the basic rate of wages for employment during regular working hours.

Laborers performing the following work or operating the machines specified shall be paid above the basic rate as follows:

Classification	Per hour above basic rate
General Foreman.	15%
Grade Checker.	10%
Foreman.	10%
Blasters.	10%
Supplied Air Respirator.	5.00
Men working with hazardous waste and toxic materials as defined in Article VI Section 2(c) or in	

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(b) If the holiday falls on a Saturday or Sunday, it shall be celebrated on Monday. In the event that men are required to work on a holiday, in addition to the holiday pay to which they are entitled, they shall be compensated at double time.

(c) Any employee laid off seven (7) calendar days or less prior to a holiday shall be entitled to receive holiday pay provided he has not taken a voluntary lay-off in the interim.

(d) A man must work the scheduled working day before and the scheduled working day after the holiday to receive holiday pay. However, an employee not able to report because of proven sickness, death in the immediate family, or accident shall be entitled to holiday pay.

(e) If a man is ordered out and reports for work on a day which has been designated as a paid holiday and is not put to work, then in addition to his holiday pay he shall be paid a minimum of four (4) hours at straight time. If a man is put to work on a paid holiday he shall be paid a minimum of eight (8) hours pay at double the rate of wages in addition to his holiday pay irrespective of the hours worked.

ARTICLE III WAGES

Section 1. Effective as of the 1st day of April, 2015, and to continue through the 30th day of June, 2015, the basic rate of wages for employment during regular working hours shall be Twenty-four Dollars and Fifty Cents (\$24.50) per hour. Effective as of the 1st day of July, 2015, the rate of wages shall

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General Counsel Exhibit 4 - 2015-2018 Agreement.

Work in Caissons below 8 Feet. .30
 Concrete Motor Buggy. .30
 All other operators of mechanical tools
 including vibrators .30
 regardless of type of power.

Section 2. (a) OVERTIME-DAYS: On all building construction, any time worked before 8:00 o'clock a.m. and after 4:30 o'clock p.m. is overtime and shall be paid for at time and one-half. Work performed on Saturday shall be paid for at time and one-half. Work performed on Sunday and on holidays listed in Article II, to 8:00 o'clock a.m. on the day following the holiday, shall be paid for at double time. In the case of paid holidays, the double time paid shall be over and above the holiday pay.

(b) After due notification, any employer guilty of violating any wage provision of this contract shall be required to pay to each of his employees the wages which were unpaid, plus an additional ten percent (10%) of the whole original amount due as a penalty.

(c) The Employee and the Union shall have the right to take any legal action necessary to recover any said unpaid wages after the third step of the Grievance Procedure has been complied with, and it is understood and agreed that the fourth and fifth steps of said Grievance Procedure shall not apply.

Section 3. CHECKOFF FOR MEMBERSHIP DUES:

Provided there has been furnished to the Employer a written authorization on a form similar to the following, signed by each Employee who is a

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areas of radioactive material and asbestos as specified in bidding documents and specifications. 2.00
 Men working on the removal of asbestos from roofs, ceilings, pipes, walls, boilers, etc. and all machinery and recovering of same. 2.00
 Wagon Drill - Airtrack. 1.00
 Lazer Beam Operator .85
 Road Finishers. .60
 Gunnite Nozzelmen. .60
 Sand Blasters. .60
 Form Setter. .60
 Burning Torch. .60
 Operator of Concrete Saw. .60
 Video Machine Operator in Inspection of Pipe. .50
 Potman. .30
 Pipe Layers. .30
 Pavement Breakers or Busters. 30
 Jack Hammer Operators. .30
 Barco Rammers. .30
 Chain Saw. .30
 Powder Monkey. .30
 Black Top Rakers. .30
 Scalers. .30
 Drill Helpers. .30
 Mortar Mixers. .30
 Men working from swing scaffold, bo'sns chair, suspended case of bucket. .30

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General Counsel Exhibit 4 - 2015-2018 Agreement.

of total Gross Wages, as part of my membership dues for said week owing by me to Local #91. Such deductions shall be made from my earned pay on each regularly scheduled pay day and shall be remitted to the Secretary-Treasurer of Local #91, no later than the 15th day of the following month. However, should the membership of Local #91 decide to decrease or increase the percentage at any time, then pursuant to sixty (60) days written notice to you from Local #91, I authorize you to decrease or increase the deduction effective on the date directed by Local #91 not less than sixty (60) days from date of said notice.

This authorization and assignment shall become effective with the date of execution of the Agreement between the same Union and yourself and shall continue in full force and effect for a period not to exceed one (1) year or the life of the Agreement, whichever occurs sooner, and for any subsequent similar period thereafter unless revoked by me within fifteen (15) days immediately preceding such contract term or one (1) year, whichever occurs sooner. The above revocation must be in writing delivered to the officers of Local #91 and bear the date and my signature.

Name _____ Signature _____
 Address _____
 City _____ Phone _____
 State _____ Zip Code _____ S.S.No _____

9

member of the Union, said Employer shall deduct from the wages of each said Employee on account of Membership Dues and pay to the Financial Secretary-Treasurer of Laborers' Local No. 91, no later than the fifteenth (15th) day following the month during which the deductions were made, the sum of ten percent (10%) of the gross wages per hour for each hour paid, including premium hours as weighted. Additionally, Twenty-five Cents (\$.25) per hour shall be deducted from the gross wages for organizing activities.

Form of Authorization for Deduction on Account of Membership Dues

NOTICE: Dues, contributions or gifts to (Local Union #91) are not deductible as charitable contributions for federal income tax purposes. Dues paid to (Local Union #91), however, may qualify as business expenses, and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

TO: ALL Employers by whom I am employed during the terms of the present or future Collective Bargaining Agreements, either by and between The Building Industry Employers Association of Niagara County, New York, Inc., or any other association and/or any Employer not a member of any Association which has an individual Collective Bargaining Agreement with Local #91 Laborers International Union of North America.

I authorize such Employers to deduct from my pay each week the sum of ten percent (10%)

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General Counsel Exhibit 4 - 2015-2018 Agreement.

Section 4. Failure by the employee to sign a membership dues check-off authorization card does not constitute a violation of the check-off dues provision of this contract.

However, the failure of the employee to pay membership dues and remain in good standing with the Union is a violation of this Agreement pursuant to Article VI Section 3 and the Federal Labor Law, and subjects said employee to dismissal from employment.

Section 5. LABORERS' POLITICAL ACTION LEAGUE:

It is agreed between the parties that provision shall be made for a deduction from a man's pay for the Laborers' Political Action League provided the deduction for such purpose is authorized by a written authorization separate from that of dues deduction and further provided that the employee understands that such deduction is purely voluntary and constitutes a donation on his part to the Fund for valid political and legislative purposes, and that his refusal to donate will not result in any form of reprisal against him from either the Union or the Employer. The Employer shall not deduct the amount of the donation from the wages of an employee until such time as he has received a written authorization on a form similar to the one set down in this Agreement.

**Dues Authorization for Payment
to Laborers Local 91 Political Action Fund**

NOTICE: Contributions or gifts to (Local Union #91) are not deductible as charitable contributions for federal income tax purposes. Contributions paid to (Local Union #91), however, may qualify

as business expenses, and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

TO: Each Employer by whom I am employed during the term of the 2015-2018 Collective Bargaining Agreement between Laborers Local 91 and The Building Industry Employers Association of Niagara County, New York, Inc. and/or any other Employer during the same period of time.

I hereby authorize each of the above Employers during the term of their respective Collective Bargaining Agreements to deduct from my earnings the sum of \$.15 per hour for each hour paid, including premium hours as weighted, to be remitted to Laborers Local 91 Political Action Fund (PAF), said sum to be remitted (monthly or weekly). I have signed this Authorization voluntarily and with the specific understanding that the PAF will use such moneys to make political contributions and expenditures in connection with Federal, State and Local elections, and for other valid political and legislative purposes, and on the further understanding that my refusal to donate would in no way affect my acquiring or retaining membership in Laborers' Local 91, or result in any other reprisal.

Dated: _____
Member _____
Social Security No. _____

General Counsel Exhibit 4 - 2015-2018 Agreement.

SECTION 6. NINETY ONE SCHOLARSHIP FUND: It is agreed between the parties that a provision shall be made for deduction for such purpose is authorized by a written authorization separate from that of dues deduction or political action and further provided that the employee understand that such deduction is purely voluntary and constitutes a donation of his part to the fund for scholarship purposes and that his refusal to donate will not result in any form of reprisal against him from either the union or the employer. The employer shall not deduct the amount of the donation from wages of an employee until such time as he had received a written authorization on a form similar to the one set down in the agreement.

**Authorization Card
Authorization for Payment to Laborers'
Local #91 Scholarship Fund**

TO: All employees by whom I am employed during the terms of the present or future Collective Bargaining Agreement either by and between this BIEA or any other association and/or any employer not a member of any association which has an individual Collective Bargaining Agreement with Local #91 Laborers' International Union of North America.

I hereby authorize each of the above employers during the term of their respective Collective Bargaining Agreement, to deduct from my earnings the sum of \$.05 per hour for each hour paid including premium hours as weighed to be remitted to Laborers' Local #91 Scholarship Fund, said sum to be remitted (monthly or weekly).

I have signed this authorization voluntarily and with the specific understanding that the Ninety One Scholarship Fund, will use such monies for this fund only, and on the further understanding that my refusal to donate would in no way affect my acquiring or retaining membership in Laborers' Local #91 or result in any other reprisal.

**ARTICLE IV
FRINGE BENEFITS**

Section 1. (a) HEALTH AND WELFARE FUND: The parties herein, pursuant to the Labor Management Act of 1947, as amended, and other Federal and State laws and regulations, have established a Health and Welfare Fund, designated as the "LABORERS LOCAL NO. 91 WELFARE FUND" for the purpose of providing for each eligible employee covered by an Agreement requiring contributions to the Fund herein, Group Life Insurance; Group Accidental Death and Dismemberment Insurance; Group Hospital, Surgical, Medical Insurance; Supplemental Unemployment Benefits; Incentive Work Benefits; and such other benefits as the Employer-Employee Trustees may adopt for each eligible employee covered by the Fund.

The parties have executed an Agreement and Declaration of Trust empowering the Employer-Employee Trustees to adopt a Health and Welfare Benefits Plan for the purposes set forth in said Fund; to administer the Fund and the Plan, including the payment of benefits and the costs of administration as provided therein.

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(b) PENSION FUND: The parties herein, pursuant to the Labor Management Act of 1947, as amended, and other Federal and State laws and regulations, have established a Pension Fund, designated as the "LABORERS LOCAL NO. 91 PENSION FUND" for the purpose of providing pensions and related benefits for each eligible employee covered by the Collective Bargaining Agreement.

The parties have executed an Agreement and Declaration of Trust empowering the Employer-Employee Trustees to adopt a Pension Plan for the purposes set forth in said Fund; to administer the Fund and the Plan, including the payment of benefits and the costs of administration as provided therein.

(c) TRAINING FUND: The parties herein pursuant to the provisions of the National Labor Relations Act, as amended, the Education Law of the State of New York, and rules and regulations promulgated thereunder have established a training fund designated as the "LABORERS' LOCAL NO. 91 TRAINING FUND" for the purpose of training and retraining persons in the skills necessary to the performance of work contemplated by this Agreement.

The parties have adopted an Agreement and Declaration of Trust authorizing the trustees of the Fund to prescribe the programs of the Fund, to administer and to implement the purposes for which the Fund was adopted and other related benefits, and any other benefits which are deemed proper for such Fund by the Internal Revenue Service.

(d) LABORERS-EMPLOYERS COOPERATION & EDUCATION TRUST FUND: The parties to this

Agreement agree to contribute to the NEW YORK STATE LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST FUND ("NYSLECE"), a tax exempt labor-management cooperation program established under Section 302(c) (9) of the Labor Management Relations ("Taft-Hartley") Act and the Federal Labor-Management Cooperation Act of 1978 for the purpose of improving communications, and engendering cooperative and harmonious relations, between and among representatives of labor and management in the industry, providing a forum for discussion of matters of mutual interest, and preserve, identify and expand work opportunities for Laborers and their employers in the industry.

(e). LABORERS HEALTH & SAFETY TRUST FUND: The parties to this Agreement agree to contribute to the NEW YORK STATE LABORERS HEALTH & SAFETY TRUST FUND ("NYSLHAST"), a tax exempt labor management cooperation program established under Section 302 (c) (9) of the Labor Management Relations ("Taft- Hartley") Act and the Federal Labor Management Cooperation Act of 1978 to improve communications and engender cooperative and harmonious relations between and among representatives of labor and management in the industry, provide a forum for discussion of matters of mutual interest with respect to Laborers health and safety, and to promote improved health and safety for laborers.

Section 2. The Employers signatory to this Agreement employing employees covered by this Agreement and working in the jurisdiction of this Agreement shall pay to the:

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of the Welfare, Pension and Supplemental Benefits Fund:

(a) In the event an Employer fails to make contributions to the Funds as agreed hereinabove, and such contributions are not reimbursed by the Construction Industry Fund, he shall be guilty of violating the Agreement and the Union shall have the right to terminate the Collective Bargaining Agreement as it relates to the delinquent Employer until the Employer has made such payments, including all penalties as provided herein.

In the event the Union terminates the Agreement and as a result of such termination Laborers working for said Employer lose employment, then, and in that event, the Employer shall pay said Laborers so terminated two (2) days waiting time.

(b) The Union and/or the Trustees of the Welfare Fund, Pension Fund and Supplemental Benefits Fund or any authorized agent of the Trustees shall have the right, after seventy-two (72) hours notice, to examine and copy the payroll records, payroll books, payroll papers and payroll reports, W-2 forms, W-4 forms, S.S. Quarterly Report Form 941, and such other reports required by the Federal and State Governments regarding payrolls of the Employer as may be necessary to determine the hours of work done and the place where the work was done by the employees covered by the Labor Agreement; and to permit the Trustees and/or Union to determine whether said Employer is making full payment to the above named Funds in the amount required by the Collective Bargaining Agreement.

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(a) Laborers' Local No. 91 Welfare Fund (SUB Fund incorporated therein) Thirteen Dollars and Thirty-nine Cents (\$13.39) per hour for each hour worked through June 30, 2015, and effective July 1, 2015 and until June 30, 2018, such additional sums as may be allocated to be paid to the Fund in accordance with Article IV Section 8 of this Agreement.

(b) Laborers' Local No. 91 Pension Fund Seventeen Dollars and Two Cents (\$17.02) per hour for each employee for each hour worked through June 30, 2015, and effective July 1, 2015 and until June 30, 2018, such additional sums as may be allocated to be paid to the Fund in accordance with Article IV Section 8 of this Agreement.

The same multiple which applies to the payment of overtime work shall also apply in the payment of fringe benefits.

These payments shall be due on pay day as defined in the Collective Bargaining Agreement, but shall be paid no later than one week from the due date, unless extended by the Trustees, after which said Employer will be considered delinquent subject to penalties and costs incurred by the Trustees for collection of said delinquent accounts as hereinafter provided.

In the Employer's discretion, it may pay the amount required to be paid to the various fringe benefit funds by the issuance of a single check for the total, made payable to Laborers' Local No. 91 Benefit Funds.

Section 3. Enforcement And Penalty Provisions Regarding the Collection of Delinquent Accounts By the Union and/or the Trustees

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(c) The Employers' failure to make the required contributions to the above Funds, and such contributions are not reimbursed by the Construction Industry Fund, shall make the delinquent Employer liable for: (1) the delinquent account, plus (2) liquidated damages in the amount of 10% of the amount due; plus (3) 15% interest from the date the contributions were due; plus (4) attorneys' fees, court costs, C.P.A. costs and other costs incurred by the above named Funds for the collection of delinquent accounts.

(d) The provisions of the Grievance Procedure shall not apply to the liability of the Employer to make the required contributions to the above named Funds, nor to the Enforcement Provisions for collecting delinquent accounts provided herein, nor to any remedies for collection of delinquent accounts provided by Federal or State Laws.

(e) In the event any Employer is delinquent in the payment of contributions to any of the foregoing benefit funds and such contributions are not reimbursed by the Construction Industry Fund, and provided such action has been approved in advance by the Trustees of the Fund involved, after notification by the Union or not less than twenty-four (24) hours to said delinquent Employer, said Employer shall be considered in violation of this Agreement and the Union shall have the right to withdraw all of its members from the employment of such Employer and furnish no further employees, and further, if the Employer attempts to have performed any work over which the Union has jurisdiction, it shall have the right to picket to prevent the performance of such work.

(f) Nothing herein contained shall be construed to restrict any other lawful method of collecting contributions to the Welfare and/or Pension and/or Supplemental Benefits Funds owing by an Employer.

(g) **BONDING:** In any case where an Employer's contributions to the fringe benefits funds is not assured by the Construction Industry Fund, such Employer shall post a Thirty Thousand Dollar (\$30,000.00) performance bond to guarantee the Welfare, Pension and Supplemental Benefits Funds payments pursuant to the provisions of this contract.

After the Employer is thirty (30) days or more in arrears, the Trustees of the above Funds, or their agent, shall have the right to collect from the Bonding Company.

Section 4. The employees of the Union and of the Funds shall be covered by the provisions of the Welfare, Pension and Supplemental Benefits Funds and Plans, and the Union and the Funds shall be regarded as employers and shall make the same contributions on behalf of their employees to the said Funds as required of all other Employers signatory to this Agreement.

Section 5. (a) The parties shall execute an Agreement and Declaration of Trust empowering the Employer-Employee Trustees to adopt a Training Program for the purposes set forth in said Fund, to administer the Fund and the Plan, including the payment of training costs and the cost of administration as provided therein, and further providing that the Employer Association shall select two (2) of the

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maximum of three (3) Employer Trustees.

(b) The Employers signatory to this Agreement employing employees covered by this Agreement and working in the jurisdiction of this Agreement shall pay to the Training Fund One Dollar and Seventy-five Cents (\$.175) per hour for each employee for each hour worked through June 30, 2018.

Section 6. The Employers signatory to this Agreement employing employees covered by this Agreement shall pay to the New York State Laborers-Employers Cooperation & Education Trust Fund the sum of Ten Cents (\$.10) per hour for each employee for each hour worked through June 30, 2015, and effective July 1, 2015, the sum of Ten Cents (\$.10) per hour for each employee for each hour worked.

Section 7. The Employers signatory to this Agreement employing employees covered by this Agreement and working in the jurisdiction of this Agreement shall pay to the New York State Laborers Health & Safety Trust Fund through June 30, 2015, the sum of Five Cents (\$.05) per hour for each employee for each hour worked, and effective July 1, 2015, the sum of Five Cents (\$.05) per hour for each employee for each hour worked.

Section 8. OPTION: From the balance of the amount remaining of increases due on July 1, 2015, July 1, 2016 and July 1, 2017, not required to be allocated to Pension Fund, the Union shall have the right, in its sole discretion, to take any part or all of such increase in fringe benefits or as a deduction, provided the Employers' Organizations are notified sixty (60) days in advance of the effective date of said increase.

Section 9. When a subcontractor, not a member of the Association or in contractual relationship with the Union, is awarded work by a contractor in contractual relationship with the Union, and the subcontractor is declared delinquent by the Union in the payment of contributions to the Union's Pension, Security Benefits and Welfare Funds, the contractor, if requested to do so in writing from the Union, mailed by certified mail, shall either remove such subcontractor from the job or at its option pay any amounts due to the subcontractor after receipt of such request, by joint check payable to the subcontractor and the Union.

ARTICLE V

PAY DAY

Section 1. (a) Employees shall be paid on the job on or before 4:30 o'clock p.m. on Wednesday. If pay day falls on a holiday, employees shall be paid one (1) day earlier.

(b) If an employee is laid off or discharged he shall be paid immediately on the job or, if not, he shall be paid until the time of the day when he receives his money up to 4:30 o'clock p.m. If not paid on the day of discharge or lay off he will be paid two (2) hours show-up time the next day and for such additional time that day until paid, but not later than 4:30 o'clock p.m. This system shall continue daily until the employee receives his pay, but not in excess of five (5) working days, and the Union, as quickly as possible after the wage has not been paid, will make a reasonable effort to notify the Employer.

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ARTICLE VI

CONDITIONS OF EMPLOYMENT

Section 1. (a) SHOW-UP: A man reporting for work shall be entitled to one (1) hour show-up time, provided he remains on the job for at least the first hour. If, during the first hour, the Employer elects to put some of the men to work, he may do so, but those not put to work may go home but are entitled to be paid for the full hour. If, after the first hour, a man is requested to wait longer, or is put to work, he becomes entitled to two (2) hours pay for the period ending at 10:00 o'clock irrespective of the actual hours worked.

(b) Employers have the right to notify a man the night before not to show up unless called in.

(c) In all of the foregoing classifications Employers may require a man to work but must provide him with protective clothing such as boots, raincoats, gas masks or goggles when necessary; if the man refuses to work he is not entitled to be paid, or if after going to work the man leaves of his own volition he shall be paid only for the hours worked.

(d) Show-up time is applicable equally to shift work.

(e) If weather or other circumstances make it impracticable to work a full crew of Laborers the Employer may elect to work only a part of his crew. Those not put to work are entitled to show-up time provided they qualify in all other respects.

(f) A man called in for emergency work shall be paid a minimum of two (2) hours pay at the applicable rate except in the case where Article II, Section 3 (e) (Holidays) applies.

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In the case of shift work, holidays, Saturdays, Sundays and other overtime work, the employee shall be paid within two (2) hours after the beginning of the next work day, and if not the above system shall apply.

(c) All wages shall be payable in lawful currency enclosed in an envelope which shows the employee's name, hours worked, all lawful deductions, work period starting and ending and fringe benefits and the amount due, or by a negotiable payroll check showing all of the above information drawn on a commercial bank within the region, payable upon demand at par.

(d) The Employers shall carry Workmen's Compensation Insurance and New York State Disability Benefits on all employees covered by this Agreement. The Employer further agrees to pay Unemployment Insurance Taxes, Social Security, and the Old Age Benefit Taxes as required by law.

(e) An Insurance Carrier, if other than the State Insurance Fund, must be one approved by the Commissioner of Insurance and of sufficient demonstrated responsibility to respond to any award or decision of the Industrial Commission.

(f) Whenever an employee is separated, whether he quits, is laid off or is discharged, he must be given a record of employment slip (form 1A12.13) as required by regulation 28 of the Industrial Commission.

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(g) An injured workman shall, if at all possible and as determined by the Contractor, be given preference to any light work that may be performed on the job, if the same is available, provided however that he is still in the employ of the Contractor where the injury occurred and the doctor certifies in writing that the employee can do the work to which he is assigned.

(h) When physicals are required on the job by job specification or regulations the contractor shall pay for physicals.

(i) Saturday make up pay. In the limited circumstances that conditions beyond control of the Contractor(s), such as severe and inclement weather, power failure, fire or natural disaster, prevent the performance of a particular Project work operation(s) or the entire Project on a regularly scheduled work day, the Contractor(s) may schedule the Saturday of the calendar week during which work was prevented as a make-up day at straight time pay. If such circumstances arise (and only if such circumstances arise) and conditions on the Project cause the Contractor(s) to stop work or to be unable to commence work on the day in question, the Contractor(s) will notify the Union and the employees at that time that Saturday will be a make-up day for the affected operation(s) and the Saturday work will, notwithstanding anything to the contrary, be at straight time for the day or any portion of the work day for which work was stopped. The balance of eight (8) hour day on Saturday, if any, shall be at time and one-half the straight time rate of pay. If, in anticipation of a condition beyond the control of

the Contractor(s) (see first sentence of this section above), a Contractor seeks to cancel a day's work in advance of that day, and to schedule the following Saturday as a make-up day, the determination of whether a Contractor is unable to perform the affected work operation(s) shall be made jointly between that Contractor and the Union. It is the intention of the parties that this section be narrowly construed to apply only to circumstances that are beyond the control of the Contractor that prevent performance of work on a regularly scheduled workday.

Section 2. SHELTER: Contractor shall provide a suitable place where employees may keep their clothing, lunches, which shall be heated when the temperature is below 50 degrees Fahrenheit. The Contractor shall assume no liability for loss or damage. Contractors shall provide gloves when the Laborer is required to handle creosote or acids and while doing waterproofing.

(b) Clean, suitable sheltered toilet facilities are to be provided and maintained by the Employer.

(c) The protective clothing required to be furnished by the Employer shall be sanitized before reissuance.

When protective clothing or equipment is issued to the employee the employee will use all reasonable care to protect the same from damage and to attempt to return it to the Employer in as good condition as possible.

On any portion of work involving the removal and/or handling of hazardous or toxic materials and/or on a structure containing such hazardous

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or toxic material in areas where monitoring is required as a result of the presence of hazardous or toxic material, all of which are defined as such in the bidding documents and specifications so as to require protective clothing, then the protective clothing and complete set of work clothing shall be furnished the man as well as fifteen (15) minutes clean-up time prior to lunch and one-half (1/2) hour clean-up time prior to quitting time.

(d) It shall be the duty of the Employer to keep the change-house decently clean, but the employees shall cooperate.

(e) Ice water shall be provided for drinking during the months May through October.

(f) Employees shall be entitled to a coffee break in the morning and in the afternoon, each limited to ten (10) minutes, and each to be taken in the immediate vicinity where employee is working. There shall be no coffee truck for afternoon coffee break. Coffee break as provided shall apply to shift work.

Section 3. (a) UNION SECURITY: The Contractor recognizes the Union as the sole collective bargaining agent for all its Employees employed on work covered by the scope of this Agreement.

(b) All present employees who are or become members of the Union shall remain members in good standing as a condition of their employment.

(c) All present employees who are not members of the Union, and all employees who are hired hereafter shall become and remain members

in good standing in the Union as a condition of their employment after the seventh (7th) day following the beginning of their employment or the effective date of this contract, whichever is the later, as authorized in Section 8 (a) (3) of the Labor Management Relations Act of 1947, as amended.

(d) Upon written notice from the Union notifying the Employer of the failure of any employee covered by this contract to complete or maintain his membership because of non-payment of membership dues either by direct payment to the Union or by check-off authorization, the Employer shall, within twenty-four (24) hours of such notice, discharge said employee. Provided, further, that no Employer or the Union shall discriminate against an employee to whom membership was not available on the same terms and conditions generally applicable to other members, or, if membership was denied the employee for reasons other than failure of the employee to tender the periodic

Membership dues assessments and the initiation fees uniformly required as a condition of acquiring membership.

Section 4. (a) LABORERS' JOB STEWARD: It is agreed that the first man on any job being started shall be sent by the Business Manager as the Job Steward.

(b) New employees reporting for work shall report to the Job Steward during the first day. The Job Steward shall be required on the job whenever work being performed on said job is con-

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working day the matter shall then be referred to arbitration as provided herein.

(d) Pending any controversy during the term of this Agreement or during the negotiation of a new agreement, or during arbitration, there shall be no stoppage of work, strike or lockout until, if and unless no satisfactory agreement can be reached.

Section 6. (a) FOREMAN: When five (5) or more laborers are employed on the job a Labor Foreman will be required.

(b) A labor-foreman may direct up to fifteen (15) men.

(c) All orders to Laborers must come through the labor-foreman, or as provided herein. When men are assigned by the labor-foreman to work with mechanics as helpers, etc., they will take instructions from the foreman in charge of mechanics.

(d) A foreman or general foreman must have worked for an Employer signatory to this Agreement within the jurisdiction of Local No. 91 not less than two (2) years prior to becoming a foreman or general foreman, unless the foreman or general foreman is referred by Local No. 91.

Section 7. (a) SUBCONTRACTING: This Agreement shall apply in its entirety to all subcontractors.

(b) In its contractual relationship with a subcontractor each contractor bound by this Agreement shall, prior to or at the time of the execution of the subcontract, require such subcontractor to be bound to and abide by all the terms and conditions of this Agreement in performing work of

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sidered Laborers' work as set forth in this Agreement. The Steward shall be allowed reasonable time to see that the terms and conditions of this Agreement are not violated.

(c) The Steward shall not be laid off or discharged without just cause.

(d) Stewards are not authorized to add or subtract from the terms of this Agreement or interpret the Agreement or take any other action which may cause this Agreement to be in violation of any Federal or State Law or regulation.

(e) The Steward will be a working Steward who will be equally bound by the work rules and the terms and conditions of the Agreement, the same as any other laborer on the job. In the case of a jurisdictional dispute, the Steward will: (a) claim the work on behalf of his Union, (b) attempt to resolve the issue, (c) contact the Business Manager, but if reasonable efforts are not successful, then one of his assistants as soon as practical, who will then assume the responsibility.

Section 5. (a) BUSINESS MANAGER: The Business Manager or his regularly appointed assistant shall have the right of interviewing the Steward on the job once each day.

(b) The Employer agrees to aid the Business Manager or his regularly appointed assistant to gain admission to whatever job he shall desire to visit.

(c) In case of an alleged violation of this Agreement the Business Manager and the Employer shall attempt to negotiate a settlement. If the dispute is not settled within the next regular

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the kind covered by this Agreement, to be done at the site of the construction, and the subcontractor by acceptance, prior to or at the time of the execution of the subcontract, shall agree to abide by all the terms and conditions thereof and be subject to the Grievance Procedure and/or any other disciplinary provisions contained in this Agreement.

Section 8. (a) SAFETY: No employee shall be required or assigned to engage in any activity involving dangerous conditions of work or danger to persons or property in violation of any applicable statute, court order or governmental regulation relating to safety of person or equipment.

(b) In the event the Employer violates Section 8 (a) above, a withdrawal by the Union of the services of the man or men engaged in the particular operation shall not be in violation of this contract by the Union. The Union agrees that this privilege will not be used as a means of harassment.

(c) The Employer and the Union do hereby agree to work together to promote safety on the job for the benefit of all employees. Safety rules and regulations will be made known to all employees and the use of safety equipment will be continually promoted by both parties.

(d) The Union agrees to cooperate with the company in encouraging employees to observe the safety regulations prescribed by the company and to wear properly and utilize safety equipment as required by the company and to work in a safe manner.

(e) The Union further agrees that the Union repre-

sentative visiting job sites shall obey all company safety rules and regulations and shall obey all safety rules, standards and regulations prescribed pursuant to the Occupational Safety and Health Act or other governmental regulation or legislation, and shall wear and use properly all safety devices and equipment employees on the job site are required to wear and use.

Section 9. PICKET LINE: It shall not be considered a violation of this Agreement for employees to refuse to cross a picket line to perform work in any instance when the picket line has been established by a Building Trade Union or is established and maintained by a labor organization other than the Building Trades and over which the Trades have no control.

Section 10. PREJOB CONFERENCE: On any job over Five Hundred Thousand Dollars (\$500,000.00), at the request of the Union, the contractor shall grant a pre-job conference. If such pre-ob conference is not granted within five (5) days, the Union will have the right to picket the job. The Union agrees to relieve the contractors of any responsibility for arranging pre-job conference with subcontractors.

Section 11. LABOR MANAGEMENT COMMITTEE: The parties hereto agree to establish and implement a Labor Management Committee consisting of representatives of the Union and members of the Association for the purpose of adopting procedures to improve the construction industry.

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ARTICLE VII**PROCEDURE FOR ADJUSTING GRIEVANCE**

All grievances of members of the Union or Employer arising out of this Agreement, except those arising out of alleged violations of Article X Section 1 (k) shall be adjusted as follows:

Section 1. Between the Job Steward concerned and the Foreman.

Section 2. Between the Business Manager of the Union and the Employer.

Section 3. In the event the grievance is not settled by the Business Manager and the Employer, then either may serve notice, in writing, on the other party requesting the grievance be referred to the Arbitration Committee, which said Committee shall consist of three (3) members of the Union and three (3) members of The Building Industry Employers Association of Niagara County, New York, Inc.

Section 4. Should said Arbitration Committee, however, fail to reach an Agreement, the grievance shall be reduced to writing and referred to the Federal Mediation and Conciliation Service by either party for conciliation.

Section 5. If agreement is not reached with the efforts of the Conciliator, then the matter shall be referred to arbitration. Said arbitrator shall be named from a list of arbitrators furnished by the American Arbitration Association in accordance with the procedure provided in Section 6 hereof. The decision and award of the arbitrator shall be final and binding upon both parties.

ENFORCEMENT PROCEDURE: Whenever any dispute involving a violation of any of the terms and conditions of this Contract is decided either by Grievance Procedure, Arbitration or by Court Action against the employer or employees-signatory to the Contract involved, the said party making the decision is authorized and directed to award damages for a violation or violations thereof to the:

a. Employee or Employer who may have been damaged.

b. The Trust Funds for contributions not tendered.

c. Union in compensation for expenses and damages.

An award may also be made to the Union where the identification of employees is not clearly demonstrated by the evidence.

Section 6. Notwithstanding the foregoing sections, where the grievance involves the lay-off or discharge of the Steward, the matter shall be submitted directly to arbitration provided the Union serves a notice in writing upon the Executive Secretary of the Association, or his Assistant within five (5) working days following such lay-off or discharge, protesting the lay-off or discharge and requesting that the question whether there was just cause for the lay-off or discharge be submitted to arbitration.

Immediately following the service of the notice, and in any event within not more than twenty-four (24) hours thereafter, a representative from the Union shall personally meet with a representative from the Association for the purpose of selecting the impartial arbitrator. If the

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which event the party requesting the adjournment shall be given only such necessary additional time as to allow for the attendance of the witnesses deemed to be necessary. Inability of counsel to be present at the date selected by the arbitrator shall not be the basis for an adjournment.

The arbitrator shall decide the case promptly after the close of the testimony, without the submission of written briefs and preferably on the same day. The arbitrator shall be acquainted with these requirements prior to his accepting the assignment. If the arbitrator believes he cannot decide the case on the same day, then he shall deliver his decision within no later than one week following. The only requirement for a decision is that it be in writing, stating the deposition of the grievance and the remedy, if any, signed and subscribed to. The arbitrator shall not be obligated to set forth any reasons for his decision, but may do so if his decision is not thereby delayed.

The parties shall share equally the expenses and fees of the arbitrator.

ARTICLE VIII **TERM OF AGREEMENT**

Section 1. This Agreement shall become effective April 1, 2015.

Section 2. (a) This Agreement shall remain in full force and effect until March 31, 2018. Either party may, sixty (60) days prior to the termination of this Agreement, give written notice to the

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representative of the two parties are unable to mutually agree upon the person they wish to serve as arbitrator, said person shall be selected by the representatives each, alternately, striking a name from a list of arbitrators furnished by the American Arbitration Association, until only one name remains, and the person whose name remains shall be selected as the impartial arbitrator. An attempt shall be immediately made to contact said person and, if he cannot be contacted within twenty-four (24) hours, or, if when contacted, advises that he cannot make himself available within the following three (3) days (excluding Saturdays, Sundays and Legal Holidays) to hear said arbitration his name shall be discarded and the next last person stricken from the list shall serve as the arbitrator. The same process shall continue until an arbitrator is selected who is available within a period of three (3) days to hear said arbitration.

If the parties cannot agree which party shall strike the first name from the list the tossing of a coin shall determine such order. If notice protesting such lay-off or discharge and request for arbitration is not given in the manner and within the time limit herein provided any protest of said lay-off or discharge shall be effectively waived.

The arbitrator shall agree to schedule and conduct the arbitration within a period of three (3) days following his selection and the parties agree that they will not seek an adjournment of the date scheduled by the arbitrator, except where the absence of witnesses would unfairly handicap the parties seeking an adjournment, in

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other party of its intention to negotiate changes in the Agreement.

(b) If either party gives notice as aforesaid, then within ten (10) days from the service of this notice, representatives of the Employer and the Union shall meet to negotiate and agree upon such changes.

(c) If no Agreement as to such change is arrived at on or before March 1, 2018, then a Conciliator from the Federal Mediation and Conciliation Service shall be called in for assistance.

(d) If no Agreement as to such changes is arrived at before the above expiration date, then this contract is terminated unless mutually extended in writing by the parties hereto.

ARTICLE IX

JURISDICTION OF WORK

Section 1. The International Union has jurisdiction in the following and over such other work as it shall hereafter acquire.

TENDERS: Tending masons, plasterers, carpenters and other building and construction crafts, and mixing, handling, unloading and conveying of all materials, fixtures, cases and furniture used by or installed by masons, plasterers, carpenters and other building and construction crafts, whether done by hand or by any other process, drying of plaster when done by salamander heat, and cleaning and clearing of all debris; mopping, washing, waxing, polishing or dusting of all floors or areas. Installation of all temporary tar-

paulins for weather protection. Laborers will be responsible for the temporary protection, cleaning and housing of all equipment and machinery operated by members of this Bargaining Unit.

SCAFFOLDING: Building of scaffolding and staging for masons and plasterers.

EXCAVATIONS AND FOUNDATIONS:

Excavations for buildings and all other construction; digging of trenches, piers, foundations and holes; digging, lagging, sheeting, cribbing, bracing and propping of foundations, holes, caissons, cofferdams, dams and dikes.

CONCRETE: Concrete for wall, foundations, floors, or for any other construction; mixing, handling, conveying, pouring, vibrating, gunning and otherwise applying concrete, whether done by hand or any other process, and wrecking, stripping, dismantling and handling concrete forms and false work, including beam bottom and beam sides; building of centers for fireproofing purposes, and the erection of composition, gypsum and precast concrete roofing plan

ASBESTOS WORK: (a) All asbestos removal work and all work pertaining to the removal of asbestos regardless of whether or not the substrate will be demolished or a substitute material will be applied regardless of the materials components. It is mutually agreed that in accordance with this Contract, the work listed below shall be performed by Laborers only: The handling, loading, unloading, stacking, distribution, erection and dismantling of any and all types of scaffolding and/or work platforms used in the removal

General Counsel Exhibit 4 - 2015-2018 Agreement.

UNDERPINNING AND SHORING: Shoring, underpinning, raising and moving of all structures.

DRILLING AND BLASTING: All work of drill running, jack hammering and blasting.

COMPRESSED AIR: All work in compressed air construction.

SIGNAL MEN: Signal men in all construction work defined herein.

GENERAL EXCAVATION AND GRADING: The clearing, excavating, filling, backfilling, grading and landscaping of all sites for all purposes and all semi and unskilled labor connected therewith.

FACTORIES: Laborers in factories and mills.

GENERAL LABORERS: All laborers in shipyards, material yards, junk yards, asphalt plants, concrete plants, cemeteries, and the cleaning of streets, ways and sewers, and all laborers' work of an unskilled and semi skilled nature.

PIPE: The laying (installing) of high density polyethylene pipe in ground, whether single or double wall contained. In place relining and cleaning of pipe.

PITS, YARDS AND QUARRIES: All drillers, blasters, signalmen and laborers in quarries, crushed stone yards, and gravel and sand pits.

WRECKING: The wrecking of buildings and all structures.

WATCHMEN: Flagmen, guards, security men, garbage and debris handlers and dump-men.

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of insulating material regardless of the composition of said material. The removal of all insulation materials, whether they contain asbestos or not from mechanical systems, (pipes, boilers, ducts, flues, breechings, etc.) on all mechanical systems (pipes, boilers, ducts, flues, breechings, etc. that are going to be scrapped. The removal of all asbestos-containing materials from walls, ceilings, floors, columns and all other non-mechanical structures and surfaces, etc. The term "removal" as used in this Agreement shall also include the sealing, labeling and dropping of scrap material into the appropriate containers. The loading at the designated area of all materials that have been removed, bagged and tagged, as well as cleanup and all unloading, burying and other work required at the disposal site is recognized as being the exclusive work of the Laborers.

(b) The vacuuming of toxic waste and operation of vacuuming type of equipment and super sucker, etc. The vacuuming of dust and debris by any such means. The cleaning of all types of pipe, catch basin and manholes, by hand, vacuum type system, mechanical, super sucker, or any other type of system.

TRENCHES, MANHOLES, ETC.: Cutting of streets and ways for laying in conduits for all purposes; digging of trenches, manholes, etc., handling and conveying of all materials for same, concreting of same, back filling, grading and resurfacing of same, and all other semi and unskilled labor connected therewith.

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General Counsel Exhibit 4 - 2015-2018 Agreement.

International Union of North America is bound or is obligated to be bound, then either party hereto, upon ten (10) days notice to the other, may reopen this contract for the purpose of the consideration and adoption of a provision relative to said plan for the settlement of jurisdictional disputes, but for no other purpose.

ARTICLE X HIRING PROCEDURE

Section 1. (a) The Union and the Employer recognize the Union is in a position to aid the Employer in recruiting needed employees who can meet the standard of the trade, and who promote the efficiency of the operations of the Employer.

(b) The Employer shall be at liberty to hire employees in any manner under the National Labor Relations Act of 1947, as amended, and the rules and regulations of the National Labor Relations Board, and shall have the right to use the facilities of the Union to recruit job applicants, or may hire directly, under the following conditions:

(c) If the Employer elects to use the facilities of the Union to recruit job applicants he shall advise the Union on the prior day, the number of employees needed, the specific job applicants requested and/or the qualifications and skills of job applicants whether or not specifically requested.

(d) The Employer retains the right at any time to request a specific job applicant whether or not he/she has previously worked for the Employer and regardless of his/her position on any hiring list or out-of-work list.

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Together with all other jurisdictional claims granted any other Building Trade which conflicts with the Charter Grants to this Union, Green and Gray Book Decisions, Memorandums of Understanding between International Unions, 10-K Decisions of General Application, and Agreements between International Laborers' Union and National Associations.

If in the course of negotiation with other trades, another trade is given some claim of jurisdiction which the Laborer can substantiate as belonging to him through reference to his Charter Grant and/or Gray or Green Book decisions of record and/or International Memorandums of Understanding and/or 10-K Decisions of General Application and/or International Agreements with National Contractors Associations, the Laborer shall be entitled to insert the same claim in this Contract.

During the term of this Agreement there shall be no strikes, lockouts, work stoppages, slow down or picketing because of any dispute regarding jurisdiction of work. This provision shall not apply, however, if after the jurisdictional dispute has been settled by final decision of the N.L.R.B. or through the Grievance Procedure of binding arbitration, the Employer involved refuses to abide by the decision.

Section 2. If, during the term of this Agreement, the Associated General Contractors of America and the Building and Construction Trades Department, AFL-CIO agree to plan for the settlement of jurisdictional disputes to which the Laborers

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General Counsel Exhibit 4 - 2015-2018 Agreement.

file an appeal within ten (10) days from the time of the claimed discrimination, with the party of this Agreement so charged. Such an appeal shall be heard by a Board composed of one (1) representative of the Employer, one (1) representative of the Union, and a third neutral Board member to be chosen by the other two (2) members, which Board shall proceed to hear the appeal within one (1) week after the appeal is filed with the party hereto charged with discrimination, and the said Board shall render a final decision within three (3) days after such hearing on appeal.

(k) The only restriction upon the right of an Employer to hire employees directly rather than through the facilities of the Union Hiring Hall, is that the employee so hired must qualify under one of the preferences above enumerated, and within a reasonable time after the hiring has occurred, the Hiring Hall shall be advised the name of the person so employed and the pertinent information necessary to show his qualification under one of the preferences.

(l) The parties to this Agreement shall post, in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of this hiring procedure, and the Union Shop provisions of this Agreement.

(m) The requirement for the Union to maintain and operate a Hiring Hall, and for the Employer to hire under some circumstances through said Hall, shall automatically cease in the event a change occurs in the present law, which requires that job re-

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(e) The selection of applicants for recommendation by the Union shall be on a non-discriminatory basis, and shall not be based on, or in any way affected by Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements.

(f) The Employer agrees to give all applicants fair consideration consistent with the policies of the National Labor Relations Act, as amended.

(g) The Employer retains the right to reject any job applicant recommended by the Union.

(h) Preference in hiring shall be given to:

1. Job Applicants specifically requested by the Employer as provided in (d) above.
2. Workmen who have been recently laid off by a contractor now desiring to re-employ the same workmen, provided they are available for employment.
3. Request made by contractors for men who do work in certain classifications contained in the contract.
4. Workmen who have worked for contractors in the area for not less than one (1) year from the time of the request for hiring.
5. Workmen who have lived in the area for a period of not less than two (2) years.
- (i) In the event the Union cannot provide men when requested to do so by the contractor, then after twenty-four (24) hours from such request the contractor may hire his men from other sources.
- (j) Any person who claims discrimination shall

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General Counsel Exhibit 4 - 2015-2018 Agreement.

parties hereto that it is their intention to comply with the provisions of the National Labor Relations Act, as amended, and the parties hereto agree that in the event any provision of this Agreement is voided as being in contravention of any provision of the National Labor Relations Act, then said provision of this Agreement shall be void, but the remainder of this Agreement shall remain in full force and effect. It is further agreed that if any provision of this Agreement becomes void because it is in contravention of the National Labor Relations Act, the parties shall meet within a period of sixty (60) days and will conscientiously attempt to redraft a provision in substitution for that which was found invalid.

ARTICLE XI**CONSTRUCTION INDUSTRY FUND**

Section 1. All Employers signatory to this Agreement, whether members or non-members of The Building Industry Employers Association of Niagara County, New York, Inc. ("B.I.E.A.") agree to pay and remit to the B.I.E.A. on or before the fifteenth (15th) day following the end of each calendar month Fifteen Cents (\$.15) per hour for each hour worked during said calendar month by all employees whose rate of wages and conditions of employment are governed by this Agreement. Simultaneously with the payment of this contribution, the Employer shall also file a written report with the Union or, at the B.I.E.A.'s option, with the B.I.E.A. setting forth:

(i) The names and social security numbers of

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referrals must be on a non-discriminatory basis, not dependent on Union Membership.

Section 2. ENFORCEMENT: All grievances arising out of Section 1 (k) of this Article shall be adjusted as follows:

(a) Between the Business Manager of the Union and the representative of the Employer.

(b) In the event the grievance is not settled by the Business Manager and the representative of the Employer, then either party may serve notice, in writing, on the other party requesting that the grievance be referred to the Arbitration Committee, which said Committee shall consist of three (3) members of the Union and three (3) members of The Building Industry Employers Association of Niagara County, New York, Inc., and a seventh (7th) member to be appointed by the Union and Employer Committee members herein.

(c) The decision and award of the said Arbitration Committee shall be final and binding upon both parties.

(d) Failure of either party to comply with the award and decision of said Arbitration Committee shall subject them to the authority of the Federal Courts to enforce said grievance order, pursuant to Section 301 of the United States Labor Law and other sections of the law pertinent thereto.

Section 3. DISCRIMINATION: The parties hereby agree to comply with all State and Federal statutes prohibiting discrimination in employment because of race, creed, color or national origin.

Section 4. SAVINGS CLAUSE: It is agreed by the

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General Counsel Exhibit 4 - 2015-2018 Agreement.

the employees covered by the Agreement who have been in the employ of the employer during such calendar month.

(ii) The number of hours worked by each employee during each calendar month.

(iii) Payments shall be made in a single check with payments due to various Union Funds and paid directly to the Union Fund office in accordance with the provisions of this Agreement or, at the option of the B.I.E.A., shall be made on forms provided by the B.I.E.A. and submitted directly to the B.I.E.A. office, 631 Main Street, Niagara Falls, New York 14301.

Section 2. The parties hereto agree that the contribution of Fifteen Cents (\$.15) per hour for each hour worked is made in consideration of the Employers' cost of negotiating and administering this Collective Bargaining Agreement, and the formulation, implementation and administration of programs advancing union construction.

Section 3. The parties hereto agree and consent that any dispute arising between them regarding the application of this Agreement, including the payment to Construction Industry Fund of the Fifteen Cents (\$.15) per hour for each hour worked and the collection thereof, shall be adjudged in accordance with the provisions of the grievance procedure contained in this Agreement. The Union shall not be obligated to collect any amounts due from any Employer, nor shall it be responsible for the enforcement of any procedure to collect the Fifteen Cents (\$.15) per hour for the B.I.E.A., provided however, the Union shall

file a grievance as against the Employer for its alleged violation of the Agreement upon written request by the B.I.E.A.

Section 4. The Union agrees to provide the B.I.E.A. the name and address of any Employer which executes this Agreement, and further agrees to furnish the B.I.E.A. copies of all reporting forms submitted to it by all Employers, members or non-members of the B.I.E.A.

Section 5. The B.I.E.A. shall be the sole administrator of the Fund and agrees that all monies received pursuant to this Article XI shall be used to cover the costs of its operations, administer this Agreement and on lawful activities in the best interest of the B.I.E.A. and construction industry, including but not limited to the formulation, implementation and administration of programs designed to increase and promote union construction and pay to B.I.E.A. costs in connection with negotiations, grievance and court. B.I.E.A. specifically agrees that none of these funds shall be used for or in support of legislative proposals, publicity or public relations adverse to the interest of the Union or in support of any effort to undermine and/or remove the Union as bargaining representative of the employees, provided, however, the Union does not contend that use of any of the funds to pay for the cost of legal representation on behalf of B.I.E.A. for processing of grievances and costs of arbitration and for collective bargaining representation are included in such prohibited activities.

General Counsel Exhibit 4 - 2015-2018 Agreement.

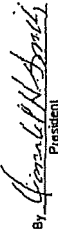
conditions more advantageous to such Employer, or should the Union in the case of any Employer which is bound to this form of Agreement, countenance a course of conduct by such Employer enabling it to operate under more advantageous terms and conditions than is provided for in this Agreement, the Employers, party to this Agreement, shall be privileged to adopt the entire Agreement containing the more favorable terms and conditions and provided further however the Employer, through the Association, has sent written notice to the Union calling the matter to its attention.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Labores' International
Union of North America,
Local No. 91
AFL-CIO

The Building Industry
Employers Association
of Niagara County,
New York, Inc.

By: 
Business Manager

By: 
President

By: 
Secretary/Treasurer

By: 
Executive Secretary

William H. Ance

The undersigned, an Employer performing work within the jurisdiction of Laborers International Union of North America, Local No 91 A.F. of L. - C.I.O.,

CERTIFIES that it has read and is familiar with the foregoing Agreement and AGREES to abide by and be bound by all the terms and conditions thereof.

Dated: _____

By: _____

ARTICLE XII INDUSTRY PROMOTIONAL FUND

Section 1. The Union agrees to contribute an amount equal to Two Cents (\$.02) per hour for each hour worked by all employees whose rate of wages and conditions of employment are covered by this Agreement to the Industry Promotional Fund. The Building Industry Employers Association of Niagara County, New York, Inc. shall match the contribution made by the Union in an amount equal to Two Cents (\$.02) per hour for each hour worked by employees covered by the terms and conditions of this Agreement and for whom contributions were made to the Construction Industry Fund pursuant to Article XI of this Agreement to be paid to the Industry Promotional Fund. Payment shall be made in accordance with the provisions of the Industry Promotional Fund. The parties agree that the Industry Promotional Fund shall be administered by all participants therein and the moneys shall be used on all lawful activities in the best interest in advancing and promoting union construction.

The Union agrees to participate in a restructured Promotion Fund provided all Unions with whom the Association negotiates participate in the Fund as restructured and further provided the Union is part of the restructuring process.

ARTICLE XIII EQUAL TREATMENT OF EMPLOYERS

Should the Union at any time hereafter enter into an agreement with any Employer performing work covered by the terms of this Agreement with terms and

General Counsel Exhibit 4 - 2015-2018 Agreement.

The undersigned, an employer performing work within the jurisdiction of Local Union No. 91 of the Laborers' International Union of North America AFL-CIO, certifies that it has read and is familiar with the foregoing agreement and agrees to abide and be bound by all the terms and conditions thereof.

The Building Industry Employer's Association
of Niagara County New York, Inc. (2015-2018)

**Laborers' International Union
of North America Local #91**

4500 Wilmer Industrial Estates
Niagara Falls, New York 14305
Tel: (716) 297-6441 - Fax: (716) 297-3414

Dated: _____
Company Name: _____
Duly Authorized Officer: _____
Title: _____
Address: _____
Phone: _____
Business Representative, Local 91: _____
Name Of Insurance Company: _____
Disability & Compensation #: _____
Registration # For NYS Unemployment Insurance: _____
Federal Tax ID#: _____

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General Counsel Exhibit 4 - 2015-2018 Agreement.

The undersigned, an employer performing work within the jurisdiction of Local Union No. 91 of the Laborers' International Union of North America AFL-CIO, certifies that it has read and is familiar with the foregoing agreement and agrees to abide and be bound by all the terms and conditions thereof.

The Building Industry Employer's Association
of Niagara County New York, Inc. (2015-2018)

**Laborers' International Union
of North America Local #91**

4500 Witmer Industrial Estates
Niagara Falls, New York 14305
Tel: (716) 297-6441 Fax: (716) 297-3414

Dated: _____
Company Name: _____
Duly Authorized Officer: _____
Title: _____
Address: _____
Phone: _____
Business Representative, Local 91: _____
Name Of Insurance Company: _____
Disability & Compensation #: _____
Registration # For NYS Unemployment Insurance: _____
Federal Tax ID#: _____

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General Counsel Exhibit 5 - Hours Credited to R. Mantell, Calendar Year 2017.

5770SS1 V7R2M0 140418 Print Key Output 09/25/17 08 26 52 Page 1

Display Device GINNAI S10B83CT

User GINA

Hours Worked History by Date Worked

Cnt #	Date	Received	NO	Name	Employer	Ref	Local Home	Contrb	Recip	Rate	Hours Worked	Hours Credited	Hours To Date	Typ
46	02262017	03152017	3	SCRUPARY CONSTRUCTION CO	1000012543	91	91	13	640		6 00	6 00	6 00	

46 02262017 03152017 3 SCRUPARY CONSTRUCTION CO 1000012543 91 91 13 640 6 00 6 00 6 00

Type of Record A (I=In & Out A= Active blank=all)

Beginning Date Worked 01 01 2017 Press Enter For

Ending Date Worked 09 26 2017 Additional

Fund Number 1 WELFARE PLAN

cmd01-return to 1st screen

cmd03-return to previous screen

cmd07 end of job

cmd10-display hours

cmd11-display amounts cmd12 display PAP Amt

Gordon

G-C EX. 5

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General Counsel Exhibit 13 - Out of Work List.

6/21/2017 10:16 AM
R006000

Page 1 of 1

**LABORERS INTERNATIONAL UNION OF NORTH
AMERICA****Rollover Report**

LOCAL 91

For Referral List JOURNEYMEN

Position	Name	Date & Time Inserted	Card Num.	S	Signature
1	GLENN P. ZIENTARA	12/8/2016 8:17 AM	0002949653	A	
2	CHRISTOPHER VAN EVERY	3/8/2017 12:35 PM	0002892847	A	
3	ADAM K. PATTERSON	3/8/2017 12:35 PM	0003329441	A	
4	MATTHEW VAN EVERY	3/8/2017 12:35 PM	0003420137	A	
5	STANLEY E. KAJFASZ JR	3/8/2017 12:35 PM	0002936886	A	
6	ROGER HEDLUND JR	3/8/2017 12:40 PM	0003680239	A	
7	RONALD J. MANTELL	3/10/2017 8:25 AM	0003121593	A	
8	MICHAEL A. QUARCINI JR	5/18/2017 10:10 AM	0003445997	A	
9	GREGG S. STRASSEL	5/30/2017 1:16 PM	0003704982	A	
?-10	KARL WALKER	6/7/2017 7:09 AM	0003824576	A	
11	ROBERT BRAY	6/9/2017 9:14 AM	0004473958	A	
12	LAWRENCE J. QUARCINI	6/9/2017 9:15 AM	0003336080	A	
13	DONALD RALPH	6/9/2017 9:15 AM	0004062718	A	
14	EVAN E. HASELEY	6/9/2017 9:17 AM	0003612232	A	
15	BRUCE SPIRA	6/9/2017 9:17 AM	0002585694	A	
16	JOSEPH G. MYLES	6/20/2017 7:10 AM	0003688764	A	
17	RALPH G. ROSE	6/21/2017 8:56 AM	0003420138	A	
18	JAMES G. SPOTTED-ELK	6/21/2017 8:58 AM	0004803785	A	

THOMAS JOHNSON INC

WAS SENT TO WORK ON 6-26-17. ~~HE~~ TOLD ME HE
 WAS THE STEWARD ON THE JOB. THE UNION
 I SHOWED UP ON THE JOB THAT SAME DAY. TO FIND
 OUT THAT THAT WAS FALSE. I WAS AVOIDED AT
 #7 ON THIS LIST. JOB WAS A 2 to 3 month JOB.

GC EX. 13

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General Counsel Exhibit 16 - Weekly Dispatch Report, 1/1/2015 to 1/1/2017.

10/10/2017 3:05 PM
R006006

Page 1 of 6

LABORERS INTERNATIONAL UNION OF NORTH
AMERICA

Weekly Dispatch Report

LOCAL 91

For the period of 1/1/2015 to 10/1/2017.
~~For the period of 1/1/2015 to 10/1/2017.~~

A-1 LAND CARE INC.

Name	List Position	Job Name	Start Date	Location
JOHNSON, WILLIAM E	20	RESERVOIR PARK	8/27/2015	
MANTELL, RONALD J	8	RESERVOIR PARK	9/17/2015	
MANTELL, RONALD J	10	RESERVOIR PARK	9/9/2015	
MANTELL, RONALD J	24	RESERVOIR PARK	8/27/2015	

ACCADIA SITE CONT. INC

Name	List Position	Job Name	Start Date	Location
STRASSEL, GREGG S	16	LINCOLN AVE	4/17/2015	

ACCENT STRIPE INC

Name	List Position	Job Name	Start Date	Location
MAMELI, VINCENT	15	PACKARD & I-190	4/6/2015	
MAMELI, VINCENT	21	WILLIAMS & RIVER R	9/1/2015	
TIBERI, PAUL F	30	PARKWAY	5/20/2015	
MAMELI, VINCENT	24	DUTY FREE	8/21/2015	DUTY FREE

AMERICAN ENVIRONMENTAL GROUP LTD

Name	List Position	Job Name	Start Date	Location
ROSE, RALPH G	15	NIAGARA LANDFILL	6/8/2016	
ZIENTARA, GLENN P	1	BFI	7/7/2015	
JOHNSON, WILLIAM E	6	ALLIED WASTE	5/8/2017	ALLIED WASTE
WALKER, KARL	37	ALLIED WASTE	5/8/2017	ALLIED WASTE

ANASTASI TRUCKING & PAVING

Name	List Position	Job Name	Start Date	Location
STENZEL, BRUCE	23	NU	8/25/2017	
SPOTTED-ELK, JAMES G	93	DOUBLE TREE	5/17/2016	DOUBLE TREE
TIBERI, PAUL F	16	DOUBLE TREE	8/18/2015	DOUBLE TREE
TIBERI, PAUL F	30	DOUBLE TREE	8/31/2016	DOUBLE TREE

BVR CONSTRUCTION CO INC

Name	List Position	Job Name	Start Date	Location
MAMELI, VINCENT	10	GRAND ISLAND BRID	9/14/2015	
SCHUL, CARL E	54	POWER AUTHORITY	12/14/2015	
VAN EVERY, CHRISTOPHER	36	POWER AUTHORITY	12/14/2015	

C.P. WARD GENERAL CONTRACTOR, INC.

Name	List Position	Job Name	Start Date	Location
STENZEL, BRUCE	65	I-190 JOB	2/23/2015	

CATCO

Name	List Position	Job Name	Start Date	Location
MAMELI, VINCENT	11	LOCKPORT RD JOB	6/18/2015	

CERRONE MARK V INC

Name	List Position	Job Name	Start Date	Location
MAMELI, VINCENT	36	BUFFALO	8/25/2016	
MAMELI, VINCENT	61	TARAPIN POINT	12/14/2015	

GC 16

R2. #9

SSN: [REDACTED] Alt: ☐ No Relists: ☐ Card Number: 0003121560
 Name (First, MI, Last): RONALD [REDACTED] Casd Loc: [REDACTED]
 Address: [REDACTED] Application Date: [REDACTED]
 City, State, Postal Zip: NIAGARA FALLS NY 14304 Application Number: [None]
 County, Country: [None] Non Member: ☐
 Phone: 7 0741 3249 Membership Type: LABORERS
 Misc, Mobile Phone: [REDACTED] Status: ACTIVE
 Birth Date: 1871 Local: 0081

Date: 11/26/2013 Time: 10:41 AM
 User: [REDACTED] Password: [REDACTED]
 System: [REDACTED] Version: [REDACTED]

Card Number	First Name	Last Name	Birth Date	Local	Membership Type	Status	Application Date	Application Number	Non Member	Card Number	First Name	Last Name	Birth Date	Local	Membership Type	Status	Application Date	Application Number	Non Member
0003121560	RONALD	[REDACTED]	1871	0081	LABORERS	ACTIVE	[REDACTED]	[None]	<input type="checkbox"/>										

Special Diagnostics: Death Benefit Contributor
 Photo: [REDACTED]

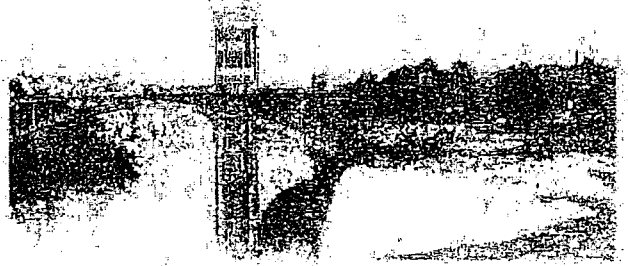
378

Respondent Exhibit 3 - Referral Hall Rules.



**LABORERS'
INTERNATIONAL
UNION
of North America**

2556 Seneca Avenue
Niagara Falls, New York 14305
PHONE: (716) 297-6441
FAX: (716) 297-3414



R 3

September 29, 2004

Re: Laborers' Local #91 Hiring Hall Rules

Dear Member,

Attached please find the revised Laborers' Local #91 Hiring Hall Rules, containing all of the variances that have been approved by the General Executive Board Attorney.

Fraternally,

Robert Connolly
Business Manager
Laborers' Local #91

Attachment

RC/ns

Respondent Exhibit 3 - Referral Hall Rules.

LOCAL UNION NO. 91, LIUNA, AMENDED JOB REFERRAL RULES

In order for the Laborers' International Union of North America (LIUNA) and its subordinate local unions to maintain and administer a processing system for referral of applicants to employment in a fair and equitable manner, and to establish records and procedures which will be adequate to disclose fully the basis on which each referral is made, the following amended rules have been promulgated and shall be adopted and implemented by each LIUNA Local Union.

1. Non-Discrimination in Job Referrals: Referrals to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, race, gender, national origin, sexual orientation, disability, religion, or lawful union-related activity.
2. Effect on Hiring Hall Rules: All referrals by a Local Union to jobs within its jurisdiction shall be made in accordance with these rules except to the extent that any rule contained herein conflicts with either provincial law or with a term of collective bargaining agreement or in accordance with a variance granted under § 8 below. Any Local Union that concludes that these rules conflict with provincial law or the term of a collective bargaining agreement shall apply to the GEB Attorney, furnishing such information as he shall determine. The GEB Attorney shall advise the Local Union in writing whether such a conflict exists. In cases where a term of a collective bargaining agreement conflicts with these rules, the Local Union or district council shall use its best efforts to modify that term in any successor agreement in order to fully conform to these rules. All newly negotiated agreements should include these rules and, where applicable, the Local Union or district council shall use its best efforts to include an exclusive hiring hall provision in all successor or newly negotiated collective bargaining agreements.
3. Registration of Availability for Referral:
 - A. An applicant seeking referral to a job must file with Local 91 a signed and dated referral form providing name, telephone number and social security number, and stating any skills the applicant possesses, the jobs the applicant is able to perform, including any relevant licenses or certifications or a designation as elderly and/or disabled, and the geographical locations in which the applicant is willing to work. Blank referral forms will be available at Local 91. Local 91 will compile an out-of-work list, consisting of the applicants who have registered their availability for referral. The Local Union may confirm any prior employment, licenses, or certifications listed by an applicant. Local 91 has five business days from the time a member places his name on the out-of-work list to challenge an applicant's representations concerning his prior employment, licenses, or certifications. If Local 91 makes a timely challenge, it must promptly notify the applicant in writing, who shall have five business days from the receipt of this notice in which to respond and to submit any relevant information. Any applicant who remains aggrieved by a final decision of Local 91 may file a protest with the Independent Hearing Officer, who shall finally resolve all such disputes in accordance with procedures that he shall establish.

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Respondent Exhibit 3 - Referral Hall Rules.

- B. Apprentices shall be referred under a separate out-of-work list, and shall be listed according to their apprenticeship year.
- C. Only applicants who are not currently employed at the trade may register their availability for referral. Applicants who, after registering their availability for referral, on their own, obtain one or more jobs at the trade in the aggregate lasting five (5) working days or more of employment, must advise Local 91 immediately. Those applicants will then be removed from the out-of-work list. Failure to advise Local 91 of such employment as required herein will result in the applicant being removed from the out-of-work list.
- D. Applicants shall be removed from the out-of-work list upon receiving a job referral, subject to the provisions of §4C on short-term referrals. An applicant who is laid off or discharged from a job must again register his or her availability in order to be included on the out-of-work list.
- E. Once an applicant has registered his or her availability for referral, by filing a signed referral form with the Local Union, the applicant may afterward register his or her availability by telephone to the Local Union.
- F. An applicant's registration of availability for referral shall be in effect for ninety (90) days. An applicant must again register his or her availability before the expiration of that period in order to retain his or her position on the out-of-work list.

4. Referral Procedure:

- A. Subject to the following variances and exceptions, Applicants on the out-of-work list shall be referred to jobs in the order in which they have registered their availability for referral, with the first registered applicant referred first, provided that the applicant has the qualifications requested by the employer, except that:
 - 1. The first applicant referred to any job shall be a Shop Steward who shall be selected by the Business Manager without regard to position on the out-of-work list.
 - 2. Applicants who require additional hours of employment in order to qualify for Federal, State, or Union Trust Fund benefit eligibility shall be referred prior to applicants who already qualify for such benefits, with the applicants who require such additional hours being referred in order of their position on the out-of-work list.

Respondent Exhibit 3 - Referral Hall Rules.

3. Requests for foremen shall be referred at the discretion of the Business Manager from the list of certified foremen without regard to position on the out-of-work list.

4. In the event Local 91 is manning a picket line at the time it receives a request for a worker, the applicant who is on the picket line who is highest on the list and has the qualifications requested by the employer shall be referred to the job, subject to the provisions of § 4(A)(1), (2), and (3), above. Local 91 shall provide notice of all picket lines both through an announcement on radio station WJL, 1440 AM, between the hours of 6:00 a.m. and 9:00 a.m. and through notices posted on both the outside door of the offices of Local 91 and on the inside bulletin board in the offices of Local 91.

Comments

In the event Local 91 is manning a picket line at the time it receives a request for a worker, the local union must record the attendance of every applicant at the picket line and the outcome of each attempted referral.

- B. Requests by an employer for specific applicants employed by the employer within the previous year, applicants who have been recently laid off by the employer, applicants who have worked for signatory contractors for not less than one year from the time of the request for hiring, and applicants who have lived in the geographic area covered by the collective bargaining agreement for a period of not less than two years, shall be fulfilled, as required by applicable collective bargaining agreements.
- C. A referral to a job that lasts 16 hours or less will not be counted as a referral, and the applicant will return to his or her position on the out-of-work list prior to being sent to the job. In addition, a referral to a job at the convention center will not be counted as referral, and the applicant will return to his or her position on the out-of-work list prior to being sent to the job at the convention center. An applicant who is referred to a job which, lasts five (5) working days or less either because (1) the job is terminated or (2) the applicant is laid off or discharged will return to his or her position on the out-of-work list prior to receiving the referral. However, after receiving a job referral immediately following such a short-term referral, regardless of its length, that individual must again register in order to be included on the out-of-work list. The short term referral provisions herein are inapplicable and the applicant will be removed from the out-of-work list, if the applicant takes any action within the first five (5) days of employment designed to manipulate this provision of the Amended Job Rules, such as voluntarily quitting or requesting to be laid off or discharged from a job to which he or she is referred.
- D. To notify an applicant of a job referral, Local 91 shall call the applicant at the telephone number on the file. Local 91 shall record the date and time of the call, the person making the call, the name of the employer, the location of the job, the

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Respondent Exhibit 3 - Referral Hall Rules.

start date of the job, and the results of the call, including whether the call was answered, by whom and what response, if any, was made.

- E. In the event an employer makes a request for employees to be filled on the same day as the request, Local 91 will go down the out-of-work list making one telephone call to each applicant who has all of the qualification requested by the employer until the job is filled. The failure to accept such a short-notice referral, for whatever reason, shall not be treated as a refusal or as being unavailable under the provisions of § 4(F).

Comments

In these emergency situations, the urgent nature of the request must be documented in detail.

- F. Any applicant who refused or is unavailable for two consecutive referrals shall be moved to the bottom of the out-of-work list. However, the refusal to take a job at the convention center will not be counted as a refusal. An applicant must be unavailable on two separate days before he/she can be moved to the bottom of the out-of-work list. An applicant will be considered unavailable if he or she cannot be reached after three calls have been placed to the telephone number provided by the applicant, unless the applicant has given Local 91 notice in writing of unavailability for a period not to exceed thirty (30) days. The three calls must be separated by intervals of no less than thirty (30) minutes.
- G. When Local 91 determines that the applicant who is first on the out-of-work list cannot be referred because of refusal, unavailability, or lack of required skills, Local 91 shall then refer the next applicant on the out-of-work list who is willing, available, and has the required skills.
- H. An applicant shall not be referred to an employer if the applicant was previously discharged for cause by the same employer. Applicants who are twice lawfully rejected by an employer for lack of skills, after referral by Local 91, shall not be eligible for referral to a job requiring the same skills without first providing Local 91 with references from two previous employers, showing the applicant has demonstrated the skills required.

- 5. Dissemination of the Referral Rules: All rules and referral policies must be in writing. These Guidelines and all local union referral rules and policies must be posted conspicuously in the office and hiring hall of each local union, where they are available for review at all times in which the local union is open. Additional copies of these Guidelines and all local union referral rules shall be made available to members upon request, subject to the payment of reasonable copying costs. New members shall receive a copy of the job referral rules upon admission to membership.

Respondent Exhibit 3 - Referral Hall Rules.

6. Job Referral Information: Local 91 shall maintain accurate and current records of all job referrals. The records shall be preserved for a period of three (3) years from the making of each record. The records shall include the following information:
- A. All registration by applicants of their availability for referral, including the date of each applicant's registration;
 - B. A current out-of-work list, including all applicants whose registrations of availability for referral are then in effect, and the date of each applicant's registration, organized according to seniority;
 - C. All requests from employers for workers, including the date of each request, the location of the job site, the length of the job, if known, and any request by the employer for applicants with special skills, licenses, or certifications, or an applicant employed by the employer pursuant to 4(D), above.

Comments

The reference to 4(D) above should be 4(B).

- D. All instances where a job referral is not made because an applicant (1) refuses the referral, (2) is unavailable, or (3) lacks the required skills, including (where applicable) the date and time of the call(s), the person making the call(s), the name of the employer, the location of the job site, the start date of the job, the basis for not making the referral, the results of the call, including whether the call was answered and by whom, and what response, if any, was made,
 - E. All job referrals made, including the applicant referred, the date on which the applicant registered his or her availability for employment, the date of the referral, the employer, the location of the job site, the date the applicant was hired, and the date any employment terminated, and
 - F. All referral attempts, including the date and time of the call(s), the name of the person making the call(s), and the outcome of the call.
7. Access to Job Referral Information:
- A. Any applicant can inspect or copy any record containing the job referral information described in § 6. An appointment for inspection shall be scheduled for within five (5) days of request. Copies of 500 pages or less shall be provided within ten (10) days of request. Copies of more than 500 pages shall be provided within (30) days of a request. Local 91 may charge \$.50 per page to copy the first twenty (20) pages, and \$.25 per page thereafter.

Respondent Exhibit 3 - Referral Hall Rules.

- B. Lists containing the information described in § 6(A) and (B) shall be conspicuously posted, or otherwise immediately available for inspection, at the offices of Local 91 on a weekly basis, so that the previous week is posted or immediately available by the close of business on the following Monday. The information shall remain posted or immediately available for at least two weeks.
- 8. Application for a variance from a provision(s) of these Uniform Job Referral Rules may be made in writing to the General Executive Board Attorney. The General Executive Board Attorney may grant such an application provided he determines that the variance is consistent with the LIUNA Ethical Practices Code, with applicable law, and is intended to further a legitimate purpose. Any such variance shall be effective for a period of one year and shall be subject to further application to the General Executive Board Attorney in order to continue beyond one year. Further, a variance shall be subject to any condition imposed by the General Executive Board Attorney.
- 9. Any complaints or concerns regarding alleged violations of the Code of Ethics and/or Uniform Job Referral Rules to discriminate, punish, retaliate or reward members for their Union political or election activity should be promptly addressed to Inspector General W. Douglas Gow, (202) 942-2360.

Respondent Exhibit 4 - R. Mantell List of Skills.

Ron's Skills 124

[illegible]

General Counsel's Exceptions to Decision of Administrative Law Judge, Dated January 8, 2018.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)

And

Cases 03-CB-196682
03-CB-201412

RONALD J. MANTELL, an Individual

GENERAL COUNSEL'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits these Exceptions to the Decision of Administrative Law Judge David I. Goldman ("ALJ"), dated December 11, 2017, in the above-captioned cases.

Exception 1:

The ALJ's finding that Laborers' International Union of North America, Local Union No. 91 ("Union" or "Respondent") did not unlawfully deny referrals to Ronald Mantell ("Mantell") because of his brother's protected concerted activity. (ALJD 9:27-9:34.)¹ The exception is based, in part, on the ALJ's failure to apply *Wright Line*, 251 NLRB 1083 (1980), instead erroneously imposing on the General Counsel the heightened burden of proof articulated in *FES (A Division of Thermo Power)*, 331 NLRB 9 (2000), imposed exclusively in refusal to hire cases. (ALJD 7:15-7:18). Further, even if *FES* is the appropriate standard, the record evidence nonetheless demonstrates that the Union violated the Act and the ALJ erred in finding to the contrary. (ALJD 5:20-9:10.)

¹ Hereafter, "ALJD ___:___" refers to the page and line numbers from the ALJ's Decision issued December 11, 2017.

General Counsel's Exceptions to Decision of Administrative Law Judge, Dated January 8, 2018.

Exception 2:

The ALJ's finding that the Union did not violate the Act by bringing internal union charges against Mantell in retaliation for his brother's protected and concerted activity, including the subsequent fine and suspension of Mantell. (ALJD 12:9-14:22). The exception is based on the ALJ's misapplication of *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1420 (2000).

Exception 3:

The ALJ's finding that the Union did not violate the Act by changing its practice regarding members' access to the out-of-work list. (ALJD 18:6-18:41). The exception is based, in part, on record evidence establishing that the Union made the change only after Mantell – and other members – sought to police the list, rendering the change an unlawful retaliation for protected activity.

DATED at Buffalo, New York, this 8th day of January, 2018.

Respectfully submitted,

/s/

Caroline V. Wolkoff

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**National Labor Relations Board Decision and Order,
Dated August 12, 2019, as Reported at 368 NLRB No. 40.**

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction Co., Inc.) and Ronald J. Mantell. Cases 03-CB-196682 and 03-CB-201412

August 12, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On December 11, 2017, Administrative Law Judge David I. Goldman issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.¹

There are no exceptions to the judge's findings that the Respondent Union violated Section 8(b)(1)(A) by threatening, in or about November 2016, to bring internal union charges against the Charging Party, Ronald Mantell ("Ron"), if he contacted the NLRB, and by refusing, on or about June 27, 2017, to show Ron the current hiring hall out-of-work list in retaliation for his protected concerted activity the day before. We adopt these findings. Contrary to the judge's decision, we find that the Respondent also violated Section 8(b)(1)(A) by refusing to refer Ron from the out-of-work list because his brother, Frank

Mantell ("Frank"), engaged in protected criticism of union leadership and by changing its practice of making an up-to-date out-of-work list available to members on demand. We affirm, however, the judge's dismissal of the allegation that the Respondent violated the Act by pursuing internal union charges and sanctions against Ron.²

Facts

The Respondent maintains a nonexclusive hiring hall. Under the hiring hall's rules, the Respondent generally refers members to jobs in the order of their registrations on the hall's out-of-work list.³ There are, however, several exceptions to this "first in, first out" rule. These include provisions that allow the Respondent to refer a member out of order if an employer requested him or her by name, if he or she possessed required qualifications or certifications that members higher on the out-of-work list lacked, if he or she was being referred to serve as a steward or foreman, or if he or she needed additional hours to attain eligibility for unemployment or other benefits. The Respondent's job-referral rules required it to keep written records of all referrals and to permit members to inspect them on request.⁴ At all relevant times, Richard Palladino, the Respondent's business manager, was primarily responsible for selecting the members referred from the out-of-work list to fill employer requests, and Mario Neri, the Respondent's job dispatcher, maintained the list.

Prior to November 2015, Ron was referred by the Respondent on a regular basis. The record shows that the hours worked by Ron from 1990 to 2017 ranged from 54 hours in fiscal year 1990, his first year on the list, to 2063.50 in fiscal year 2006. In 2015, Ron received 11 referrals between January 1 and November 4—about one per month, the second-highest total among unit members—and worked 734.25 hours, a pace that met or exceeded that in prior years.

¹ We have amended the remedy and modified the judge's conclusions of law and recommended Order consistent with our legal conclusions herein. We shall substitute a new notice to conform to the modified Order.

² For the reasons stated by the judge, we agree that the filing of internal union charges against Ron did not impair any policies embedded in the Act. *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1417-1419, 1424-1426 (2000) (holding that internal union discipline violates Sec. 8(b)(1)(A) only if the union's actions (1) affect the employment relationship, (2) impair access to the Board's processes, (3) pertain to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impair policies embedded in the Act). Excepting to the dismissal of this allegation, the General Counsel contends that the internal union discipline against Ron was pursued in retaliation for Frank's filing of charges with the Board and thus was unlawful on the basis that it impaired access to the Board's processes. This theory of violation was not advanced in the complaint, which specifically alleges that the Respondent filed internal union charges against Ron and sanctioned him because of Frank's protected criticism of union leadership. It was not raised before the judge

at the hearing, and it was articulated for the first time on exceptions. Under long-settled Board law, arguments raised for the first time on exceptions are untimely and deemed waived. See, e.g., *Thesis Painting, Inc.*, 365 NLRB No. 142, slip op. at 1 fn. 2 (2017); *Strategic Resources, Inc.*, 364 NLRB No. 42, slip op. at 1 fn. 2 (2016); *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990). Even assuming no waiver, the General Counsel's belated argument is foreclosed because even if it is closely connected to the subject matter of the complaint (which we do not concede), it was not fully litigated. See *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

³ Members had to re-register every 90 days to maintain their positions on that list. Because the Respondent operated a nonexclusive hiring hall, it was free to operate its hall solely for the benefit of its members. See, e.g., *Teamsters Local 17 (Universal Studios and Warner Bros.)*, 251 NLRB 1248, 1257 (1980).

⁴ The documents that the Union was required to maintain included the out-of-work lists themselves, employer requests for named members, and the bases for referral selections.

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DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

In October 2015, the Respondent unlawfully retaliated against Ron's brother, Frank, by removing his name from the out-of-work list after he posted comments on Facebook that were critical of Palladino and the Respondent. See *Laborers Local 91 (Council of Utility Contractors, Inc. and Various Other Employers)*, 365 NLRB No. 28, slip op. at 1-2 (2017). Frank filed the charge in that case on November 12, 2015.⁵

Ron's last referral was on November 4. That job lasted 3 to 4 weeks. From December through May 31, 2016, Ron worked only one 7-hour job, in February 2016, and he obtained that job himself. The record does not show how many hours, if any, Ron worked from June 1 through December 31, 2016. From January 1 to September 25, 2017, he worked just one 6-hour job. That, too, was the result of his own efforts rather than a referral. Indeed, after his November 4, 2015 referral, Ron did not receive another referral from November 4 through the close of the hearing in this case on October 12, 2017.

Meanwhile, others did receive referrals. In 2015, the Respondent made a total of 75 referrals to 15 members, and Ron received the second-highest number of these. In 2016, however, the Respondent made 37 referrals to 13 individual members. Eleven of those 13 also had received referrals in 2015, but Ron did not receive any of the 2016 referrals.⁶ From January 1 to October 1, 2017, the Respondent made 36 referrals to 14 members, including the same 11 who had received referrals in 2015 and 2016. Again, Ron received none, despite ranking seventh on the out-of-work list in June 2017.

In early November 2016, Ron spoke to Palladino about his lack of work. He told Palladino that, even though he was then number two on the out-of-work list, he had not been referred all year. He further emphasized to Palladino that "[h]e needed work . . . [He hadn't] had any work." Ron also testified that "when I told [Palladino] where I was on the list he began to ridicule me about my brother Frankie. And I responded by telling him that I'm Ron Mantell, not Frank Mantell. I'm coming here to ask you for a job." Palladino said that no contractors had requested Ron by name, that Ron could find his own work, and that it was not Palladino's job to find work for him. Palladino also said that he knew that Ron planned to call the NLRB, and Palladino threatened to file internal union charges

against Ron if he did so. Another union member, Matthew Chavi, overheard this conversation and testified that he believed that it was Ron (not Palladino) who first raised the subject of Ron's brother.⁷

On June 26, 2017, Ron asked the hiring hall staff to show him the out-of-work list. At that time, the Respondent's policy was to allow members to view the current list on request. The list was updated daily, but no revisions would be made unless there were developments that changed the ranking. In response to Ron's request, dispatcher Mario Neri told Ron that the list was being updated. Neri showed Ron the most current list and noted that two members had recently been referred to jobs. Those two had been numbers 10 and 18 on the list, while Ron was then number 7. Neri explained this apparent discrepancy by asserting that the two had been referred as stewards (which, if true, would have justified their out-of-order referrals).

Ron promptly went to the jobsite where the two had been referred. After viewing the site and speaking with employees there, Ron concluded that the two were not serving as stewards. The next day, June 27, 2017, Ron returned to the hiring hall and again asked to see the out-of-work list. This time Neri refused, stating that Ron could not view the list "[b]ecause of what happened yesterday," i.e., Ron's visit to the jobsite.

Shortly after that, in late June or early July 2017, the Respondent began posting a copy of the current out-of-work list on a weekly basis instead of making the list available whenever a member so requested. Although the Respondent continued to update the list on a daily basis for its own internal records, members no longer had access to that up-to-date list. Consequently, the posted list that members could view might be out of date by as much as a week.

Analysis

I. THE RESPONDENT VIOLATED SECTION 8(b)(1)(A) BY NOT REFERRING RON FROM ITS OUT-OF-WORK LIST BECAUSE OF HIS BROTHER FRANK'S PROTECTED ACTIVITY

To determine whether a union operating a nonexclusive hiring hall refused to refer a member for discriminatory reasons, the Board has long applied the standard set forth in *Wright Line*.⁸ See, e.g., *Ironworkers Local 340*

⁵ All dates hereafter are in 2015 unless noted otherwise.

⁶ Ron testified that he was second on the out-of-work list in November 2016. The Respondent did not dispute that assertion.

⁷ The judge found both Ron and Chavi credible and stated that "Chavi's account is plausible and in many ways fuller than [Ron's]." Chavi's account of the conversation is consistent, however, with Ron's testimony that Palladino ridiculed Ron about his brother Frank. Chavi did not dispute that aspect of Ron's testimony; in fact, Chavi testified

that Palladino and Ron "went back and forth, a little bit about the family members" (i.e., Ron's brother, father, and uncle).

⁸ 251 NLRB 1083 (1980), *enfd.* 662 F.2d 889 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The judge's reliance on the criteria in *FES*, 331 NLRB 9, 12-15 (2000), supplemented by 333 NLRB 66 (2001), *enfd.* 301 F.3d 83 (3d Cir. 2002), was incorrect. As stated above, the Board has consistently adhered to the *Wright Line* test in hiring hall discrimination cases.

**National Labor Relations Board Decision and Order,
Dated August 12, 2019, as Reported at 368 NLRB No. 40.**

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 91 (SCRUFARI CONSTRUCTION CO)

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(*Consumers Energy Co.*), 347 NLRB 578, 578–579 (2006); *Operating Engineers Local 137 (Various Employers)*, 317 NLRB 909, 909–910 & fn. 5, 923 (1995); *Local No. 121, Plasterers*, 264 NLRB 192, 192–193 (1982); see also *Electrical Workers Local 429*, 347 NLRB 513, 515 (2006) (“The Board applies the analytical framework laid out in *Wright Line* [footnote omitted] to cases in which a union is alleged to have discriminated against an employee in violation of Section 8(b)(1)(A) . . .”), remanded on other grounds 514 F.3d 646 (6th Cir. 2008).⁹

Applying *Wright Line*, we find that the General Counsel satisfied his initial burden of proving that Frank Mantell’s protected Facebook criticism of union leadership was a motivating factor in the Respondent’s sudden and simultaneous cessation of referrals of Ron. To start, there is no dispute that Frank Mantell’s criticism of union leadership constituted protected activity and that the Respondent learned of that protected activity shortly before it stopped referring Ron to jobs for at least 2 years. Further, the Board’s decision in Frank’s case firmly establishes that the Respondent harbored unlawful animus against that protected activity. In addition, Palladino ridiculed Frank Mantell when Ron approached Palladino in early November 2016 to discuss his nonreferrals and his desire for work. Most tellingly, there is no dispute that Ron was regularly referred to jobs before his brother criticized the Union and filed his NLRB charge and that, beginning immediately afterward, Ron never received another referral. The Board has consistently regarded such suspicious timing as probative evidence of unlawful discrimination. See, e.g., *Napleton 1050, Inc. d/b/a Napleton Cadillac of Libertyville*, 367 NLRB No. 6, slip op. at 15 (2018) (“[U]nexplained timing can be indicative of animus.”) (citing cases); *C & L Systems Corp.*, 299 NLRB 366, 379 (1990) (contrast in treatment of employee before and after protected activity supports finding of discriminatory motivation), enf’d. 935 F.2d 270 (6th Cir. 1991).¹⁰ Thus, the

General Counsel presented a strong prima facie case under *Wright Line*.

We further find that the Respondent has failed to prove that Ron’s referrals would have completely stopped even absent his brother Frank’s protected activity. Before the judge, the Respondent’s asserted nondiscriminatory grounds for ceasing to refer Ron were that Ron had allegedly objected to 1- or 2-day referrals and that he had too few special qualifications. According to the Respondent, it was becoming more common for employers to request members for 1- or 2-day jobs and to require qualifications that Ron lacked. Ron denied saying that he was not interested in 1- or 2-day referrals. Additionally, the Respondent offered no specifics in support of these assertions and no explanation of how they could have accounted for the lack of *any* referrals over a 2-year period. The Board has held that such unspecific, conclusory testimony does not suffice to sustain a party’s *Wright Line* defense burden. See, e.g., *A.P.A. Warehouse*, 302 NLRB 110, 115 (1991). Moreover, Ron had the same qualifications both before and after November 2015, and the same holds true for his purported preference for multi-day jobs. As far as this record shows, Frank Mantell’s protected activity was the only factor that changed between the decades during which Ron was given regular referrals and the 2-year period during which he received none. Thus, the Respondent’s stated reasons for failing to refer Ron are pretextual, and the *Wright Line* analysis properly ends there. See, e.g., *Golden State Foods Corp.*, 340 NLRB 382, 383 (2003). But even assuming the second part of the *Wright Line* analysis is reached, the Respondent has not persuaded us that Ron would have received no referrals for 2 years even absent his brother’s protected activity.¹¹

Accordingly, for the foregoing reasons, we find that the Respondent violated Section 8(b)(1)(A) by refusing to refer Ron Mantell because of his brother’s protected criticism of union leadership.¹²

⁹ In *Electrical Workers Local 429*, the court of appeals found that the Board had failed to adequately support its finding that the respondent local union and remanded the case to the Board. On remand, the Board reaffirmed its Sec. 8(b)(1)(A) violation finding based on a revised agency analysis. *Electrical Workers Local 429*, 357 NLRB 332, 332–335 (2011).

¹⁰ To be sure, where, as here, the union does not operate its hiring hall on a strictly “first-in, first-out” basis, the Board will not “find unlawful discrimination merely on the basis of isolated out-of-order referrals, even if the reasons for those referrals were not explained.” *Operating Engineers Local 137*, 317 NLRB at 910. But “[i]f a pattern of unexplained out-of-order referrals appeared, . . . it would be reasonable to infer that the disfavored individuals were the victims of adverse treatment.” *Id.*

¹¹ The complete absence of any referrals over a 2-year period is especially probative. In cases involving allegedly unlawful discrimination, the federal courts have been highly skeptical of efforts to explain away

the “inexorable zero.” See, e.g., *Teamsters v. United States*, 431 U.S. 324, 342 fn. 23 (1977); *Capaci v. Katz & Besthoff, Inc.*, 711 F.2d 647, 662 (5th Cir. 1983), cert. denied 466 U.S. 927 (1984).

¹² Because of the 6-month limitation period in Sec. 10(b) of the Act, we find violations with respect to, and order remedies for, only discriminatory refusals to refer Ron beginning October 12, 2016, 6 months before he filed the charge on April 12, 2017. However, we may, and do, consider evidence outside the 10(b) period in finding that the Respondent unlawfully refused to refer Ron starting in October 2016. See, e.g., *Grimmway Farms*, 314 NLRB 73, 74 (1994) (pre-10(b) period evidence may be considered as bearing on motivation), enf’d. in part 85 F.3d 637 (9th Cir. 1996). Further, any dispute that arises over the amount of make-whole relief due to Ron under our order may be resolved in compliance. See GC’s exceptions brief at 10 fn. 11 (“Respondent’s liability relative to any particular referral during the 10(b) period is rightfully reserved for the compliance stage.”).

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**National Labor Relations Board Decision and Order,
Dated August 12, 2019, as Reported at 368 NLRB No. 40.**

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DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

II. THE RESPONDENT VIOLATED SECTION 8(b)(1)(A) BY
CHANGING ITS PRACTICE OF MAKING THE CURRENT OUT-
OF-WORK LIST AVAILABLE ON REQUEST TO A PRACTICE OF
POSTING IT ONCE A WEEK

The General Counsel alleges that in late June or early July 2017, the Respondent violated Section 8(b)(1)(A) by discontinuing its practice of allowing members to request the current out-of-work list, and instituting a practice of posting the list once a week instead, in retaliation for Ron's June 26, 2017 jobsite visit to determine whether the Respondent's explanation for referring two lower-ranking members ahead of him was truthful. The judge dismissed this allegation. In doing so, he assumed for argument's sake that the General Counsel had satisfied his burden under *Wright Line* of proving that Ron's protected investigation was a motivating factor in the Respondent's decision to change its practice. The judge then found, however, that the Respondent had shown that it would have changed the list-viewing procedure even absent Ron's protected investigation. Specifically, the judge relied on Neri's testimony that there had been an uptick in members' requests to see the list and that responding to those requests had become disruptive and "an aggravation." For the following reasons, we reverse.

In determining whether this change in hiring hall procedures violated the Act, we apply *Wright Line*, supra. To begin, we find that the General Counsel satisfied his initial *Wright Line* burden. There are no exceptions to the judge's findings that Ron's jobsite investigation was "classic protected activity" and that the Respondent knew about that activity when it changed its practice. We further find that the General Counsel proved that the Respondent harbored animus toward that activity. As explained above, the judge made a separate, unexcepted-to finding that Dispatch Manager Neri unlawfully refused to show Ron the out-of-work list on June 27, 2017, because of his protected investigation the day before. Additionally, the Respondent's change in policy (in late June or early July 2017) came right on the heels of Ron's protected investigation. See, e.g., *North Carolina Prisoner Legal Services*, 351 NLRB 464, 468 (2007) (decision shortly after protected activity strongly supports inference of unlawful motivation); *Electrical Workers Local 429*, supra, 347 NLRB at 517 (timing of union action strongly suggests unlawful motivation).

In defense, the Respondent asserted that it changed the procedure because members' requests to see the list were becoming administratively inconvenient. We find this explanation insufficient to sustain the Respondent's burden under *Wright Line*. The Respondent's defense was based solely on Neri's brief and general testimony that the change was implemented to conserve administrative

resources. Neri testified that he was "bothered" by the "flurry" of people asking for—and taking pictures of—the out-of-work list. He offered no specifics to support these assertions. He provided no details, for example, on how often members were asking to view the list or how much more time it was taking to fulfill those requests as compared to the past. As discussed earlier, such conclusory testimony does not sustain a party's defense burden of proving that it would have taken the same action regardless of protected activity. See, e.g., *A.P.A. Warehouse*, supra, 302 NLRB at 115; see also, e.g., *Hicks Oils & Hicksgas*, 293 NLRB 84, 85 (1989) (a party cannot carry its defense burden under *Wright Line* by showing it had a legitimate reason for its action but rather must show by a preponderance of the evidence that it would have taken the same action even without the protected conduct), enfd. 942 F.2d 1140 (7th Cir. 1991). This is particularly the case where the General Counsel's prima facie case of unlawful motivation is strong and the Respondent's explanation itself suggests that it made the change because it was "bothered" by Ron's—and possibly other employees'—efforts to police the list. Accordingly, we find that the Respondent violated Section 8(b)(1)(A) by changing its list-viewing procedure from one that permitted members to view an up-to-date out-of-work list on request to one that limited members' list-viewing rights to a weekly posting.

AMENDED CONCLUSIONS OF LAW

1. Add the following as Conclusion of Law 2 and re-number Conclusions of Law 2 and 3 as 3 and 4.

"2. The Respondent violated Section 8(b)(1)(A) of the Act, since October 12, 2016, by refusing to refer Charging Party Ronald Mantell from its out-of-work list because of his brother Frank Mantell's protected concerted activities."

2. Add the following as Conclusion of Law 5 and re-number Conclusion of Law 4 as 6.

"5. The Respondent violated Section 8(b)(1)(A) of the Act in or around late June or early July 2017 by changing its practice of making an up-to-date out-of-work list available to members to review on demand to a practice of posting an updated out-of-work list on a weekly basis."

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(b)(1)(A) by refusing to refer Ronald Mantell from its out-of-work referral list since October 12, 2016, we shall order the Respondent to make Mantell whole for any loss of earnings and other benefits suffered as a result of the unlawful

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discrimination against him during that time period. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, we shall order the Respondent to compensate Ronald Mantell for any adverse tax consequences of receiving a lump-sum backpay award and to file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Mantell for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, the Respondent shall be required to remove from its files any references to its refusals to refer Ronald Mantell from the out-of-work list since October 12, 2016, and to notify him in writing that this has been done and that the refusals to refer will not be used against him in any way.

Finally, the Respondent shall be required to restore its practice of allowing members to review the most current version of its out-of-work list whenever members so request.¹³ The Respondent also shall allow Mantell to view the out-of-work list as it existed on June 27, 2017, if that document is still available.

ORDER

The National Labor Relations Board orders that the Respondent, Laborers' International Union of North America, Local Union No. 91, Niagara Falls, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to refer Ronald Mantell or any other member from its out-of-work list in retaliation for activity protected by Section 7 of the Act.

(b) Threatening to bring internal union charges against Ronald Mantell or any other member because he or she contacted, or planned to contact, the NLRB.

(c) Refusing to allow Ronald Mantell or any other member to review the most current out-of-work list in retaliation for activity protected by Section 7 of the Act.

(d) Restricting access to its most current out-of-work list in retaliation for activity protected by Section 7 of the Act.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, notify Ronald Mantell in writing that it will refer him from its out-of-work list in his rightful order of priority, without regard to the exercise of Section 7 rights by him or his brother.

(b) Make Ronald Mantell whole for any loss of earnings and other benefits suffered as a result of its unlawful refusal to refer him from the out-of-work list, in the manner set forth in the amended remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to its refusals to refer Ronald Mantell from the out-of-work list since October 12, 2016, and, within 3 days thereafter, notify him in writing that this has been done and that the refusals to refer will not be used against him in any way.

(d) Compensate Ronald Mantell for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall and referral records, and any other records and documents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days from the date of this Order, permit Ronald Mantell to review the out-of-work list as it existed on June 27, 2017, if that document is still available.

(g) Restore its practice of making the most current out-of-work list available for review by members upon request.

(h) Within 14 days after service by the Region, post at its hiring hall in Niagara Falls, New York, and all other places where notices to members are customarily posted,

¹³ Our order does not require the Respondent to cease posting the out-of-work list on a weekly basis (or more frequently) if it wishes to

continue such posting in addition to making an updated list available to members on request.

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copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 12, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join or assist a union
Choose representatives to bargain on your behalf
with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to refer Ronald Mantell or any other member from our out-of-work list in retaliation for activity protected by Section 7 of the Act.

WE WILL NOT threaten to bring internal union charges against Ronald Mantell or any other member because he or she contacted, or planned to contact, the NLRB.

WE WILL NOT refuse to allow Ronald Mantell or any other member to review the most current out-of-work list in retaliation for activity protected by Section 7 of the Act.

WE WILL NOT restrict access to our most current out-of-work list in retaliation for activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, notify Ronald Mantell in writing that we will refer him from our out-of-work list in his rightful order of priority, without regard to the exercise of Section 7 rights by him or his brother.

WE WILL make Ronald Mantell whole, with interest, for any loss of earnings and other benefits resulting from our refusal to refer him.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to our refusals to refer Ronald Mantell from the out-of-work list since October 12, 2016, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the refusals to refer will not be used against him in any way.

WE WILL compensate Ronald Mantell for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, permit Ronald Mantell to review the out-of-work list as it existed on June 27, 2017, if that document is still available.

WE WILL restore our practice of making the most current out-of-work list available for review by members whenever they so request.

LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL UNION NO. 91

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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The Board's decision can be found at <https://www.nlr.gov/case/03-CB-196682> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, DC 20570, or by calling (202) 273-1940.



Eric Duryea, Esq. and Jesse Feuerstein, Esq., for the General Counsel.

Robert L. Boreanaz, Esq. (Lipsitz Green Scime Cambria LLP), of Buffalo, New York, for the Respondent.

DECISION

INTRODUCTION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. In a recent case the National Labor Relations Board (Board) found that a local union that operated a nonexclusive hiring hall unlawfully discriminated against a union member by removing him from the Union's out-of-work referral list in retaliation for his criticism of the local union's business manager. Here, the same local union is alleged to have committed a series of violations of the National Labor Relations Act (Act) directed towards the brother of the discriminatee in the earlier case.

As discussed herein, I find that in these cases the government's allegation that a local union member was unlawfully denied referrals from the local union's hiring hall because of his relationship with his brother is unproven under the appropriate legal standards. I also find that, even assuming the truth of the allegation that he was subject to internal union discipline because of his brother's protected activity, in this case the union's discipline was not prohibited by the Act. I do find, as alleged, that on one occasion the union member was unlawfully threatened with

retaliation if he contacted the Board, and on another that he was unlawfully denied an opportunity to review the out-of-work referral list for discriminatory reasons. Finally, I find that the local union's change to weekly posting of the out-of-work list did not violate the Act.

STATEMENT OF THE CASE

On April 12, 2017, Ronald J. Mantell (Mantell) filed an unfair labor practice charge alleging violations of the Act by Laborers International Union of North America, Local Union No. 91 (the Local or Local 91 or Union), docketed by Region 3 of the Board as Case 03-CB-196682. A first amended charge was filed in the case on April 24, 2017. Based on an investigation into this charge, on June 29, 2017, the Board's General Counsel, by the Regional Director for Region 3 of the Board, issued a complaint and notice of hearing in this case. Local 91 filed an answer denying all violations on July 13, 2017.

On June 27, 2017, Mantell filed an additional charge against Local 91, docketed by Region 3 of the Board as Case 03-CB-201412. On August 23, 2017, the Board's General Counsel, by the Regional Director for Region 3, issued an order consolidating Cases 03-CB-196682 and 03-CB-201412, and a consolidated complaint and notice of hearing. Local 91 filed an answer to the consolidated complaint on September 6, 2017, denying all violations alleged. The General Counsel issued an amendment to the consolidated complaint on September 25, 2017. Local 91 filed an answer to the amended consolidated complaint on October 9, 2017.¹

A trial in these cases was conducted on October 11 and 12, 2017, in Buffalo, New York.² Counsel for the General Counsel and counsel for the Respondent filed posttrial briefs in support of their positions on November 30, 2017.

On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

It is admitted (GC Exh. 1(r)) and I find that at all material times, Scrufari Construction Co. Inc. (Scrufari) has been a corporation with an office and place of business in Niagara Falls, New York, and has been a general contractor in the construction industry doing commercial construction. It is admitted (GC Exh. 1(r)) and I find that at all material times, the Council of Utility Contractors, Inc., the Independent Builders of Niagara County, the Associated General Contractors of America, New York State Chapter, Inc., and the Building Industry Employer's Association of Niagara County New York, Inc., collectively referred to as the Associations, have been organizations composed of various employers, including Scrufari, engaged in the construction industry,

¹ I note that in its answers, the Respondent denied knowledge and information sufficient to form belief as to the truth of the allegations of the complaint relating to the filing and service of the various charges and amended charges in these cases. However, there was no objection to the offer into evidence of the formal papers, including the charges, thus conceding, I find, the authenticity of the charges. Their service is supported by affidavits of service (See, GC Exh. 1(b), (c), and (f)) included in the formal papers, and I find that in the absence of any contrary evidence, the rebuttable presumption of service provided by these affidavits constitute "sufficient proof" to establish service pursuant to Sec. 102.4(d) of the Board's Rules and Regulations. See, *CCY New Worktech, Inc.*, 329

NLRB 194, 194 (1999); *Sears Roebuck and Co.*, 117 NLRB 522 fn. 3 (1957). There is no evidence suggesting that they were not served. There is no hint of any basis in the record for the Respondent's repeated denials of the various complaint allegations regarding the filing and service of the charges.

² At the outset of the trial, counsel for the General Counsel offered an unopposed oral motion to further amend the consolidated complaint, rephrasing, par. 5. The motion was granted and in wake of the motion the counsel for the Respondent represented that para. 5 of the complaint was admitted.

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one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 91. It is admitted (GC Exh. 1(r)) and I find that annually, the employer-members of each of the Associations, in the course of their business operations described above, collectively, purchase and receive goods valued in excess of \$50,000 directly from points outside the States wherein the employer-members are located. Based on the above, I find that at all material times Scrufari and the employer-members of the Associations have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is admitted and I find that at all material times Local 91 has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

A. The refusal to refer

Local 91 is located in Niagara Falls, New York, and is composed of approximately 240 members. It operates a nonexclusive hiring hall from its offices. As a nonexclusive hiring hall, the Local refers members for work, but members are free to and do obtain work directly from signatory contractor-employers without going through the hiring hall.

The Local maintains an out-of-work list that members sign up for and which is used in referrals. Although the rules are too extensive to summarize here (see R. Exh. 1), members who sign up for the out-of-work list are listed in order of date signed up. While members are often sent out in the order they signed up for the list, there are numerous and significant exceptions that limit this. For instance, employers may ask for specific employees by name and they will be sent out without regard to their place on the list. The business manager has discretion to name a steward for every job, without following the order on the list. Employees requiring additional hours to qualify for unemployment or other fund eligibility are referred above other applicants, without regard to their place on the list. Requests for foremen are filled by the business manager without regard to the list. In addition, of course, each job for which employers seek employees requires certain certifications or qualifications that the employee must have demonstrated in order to be referred to that job. Employees are required to re-register for the out-of-work list within 90 days in order to maintain their position on the list. Employees finding work on their own of one or more jobs that in the aggregate last 5 working days or more must advise the Local and are then removed from the out-of-work list.

The Union's business manager, Richard Palladino, is the primary person who determines which members get referred. The

Local's part-time jobs dispatcher, Mario Neri, has primary responsibility for maintaining the out-of-work list.

In a recent decision³, the Board found that the Local unlawfully removed a member, Frank Mantell, from its out-of-work list referral list from October 12 until November 19, 2015, in retaliation for his Facebook postings critical of the Local's business agent, Palladino. Mantell made his critical posts in August 2015. As found by the Board, Palladino filed internal union charges against Frank Mantell in early September 2015. A union trial board conducted a trial and found Mantell guilty on October 5, a decision ratified at the Local's monthly membership meeting on October 12. Mantell was removed from the out-of-work referral list the next day. He appealed to the International Union and the International Union apprised the Local of the appeal on November 19, which stayed any penalty assessed against Mantell. On December 4, 2015, the International Union informed the Local that it dismissed the charges against Mantell.

Frank Mantell's brother, Ronald Mantell (hereinafter Mantell), is a 27-year member of the Local Union. Mantell testified that over the years he has regularly gotten work through the hiring hall. Mantell testified that he was last referred out in November 2015 for a job that lasted 3 to 4 weeks. He then signed back up for the out-of-work list and was not, thereafter, referred from the out-of-work list. The Respondent's witnesses appear to acknowledge this, and it seems to be supported based on the documentary evidence placed into the record. Thus, General Counsel's Exhibit 16—entered into evidence during the cross-examination of the Local Union's dispatcher Neri—shows that between January 1, 2015 and October 10, 2017, Mantell's last referral from the Local was on November 4, 2015.⁴ According to this document, there were no more referrals of Mantell in 2016 or 2017 (through October 1, 2017, the ending point for the document).

Previously in 2015, Mantell had worked steadily. (GC Exh. 3.) Indeed, his annual pension crediting (GC Exh. 2), which shows hours worked by fiscal year (ending each May 31 of the year) shows that Mantell worked more hours in fiscal 2015 (i.e., through May 31) than he had in any year since 2009. He worked steadily in fiscal year 2016 (i.e., from June 1, 2015 forward) through November 2015. However, after that, he only worked one 7-hour job in early 2016.⁵

It is notable that no testimony and neither of these documents (GC Exhs. 2 & 3) distinguish between work Mantell may have obtained directly through a signatory employer, and work for which he was sent out from the Union's out-of-work list. Moreover, General Counsel's Exhibit 16, the document showing referrals in 2015–2017, does not show how many hours resulted from each referral or whether those referrals were the result of employer calls for specific employees, or what qualifications or

³ *Laborers' International Union of North America Local Union No. 91 (Council of Utility Contractors, Inc.)*, 365 NLRB No. 28 (2017).

⁴ Unexplained is why Mantell's work history documentation (GC Exh. 3) shows no work for Scrufari in November until November 30, for a job that lasted until December 18. Whether or not this is the same job for which he was referred, with a start of date of November 4, is not explained in the record.

⁵ Thus, the record evidence leaves us with the following, very incomplete, information. Mantell's work resulting in pension credit, which

would include work for signatory contractors obtained directly by himself and through the local union, amounted to a total of:

585.50 hours in fiscal year 2011 (through May 31, 2011)
1090.5 hours in fiscal year 2012 (through May 31, 2012)
738.25 hours in fiscal year 2013 (through May 31, 2013)
755 hours in fiscal year 2014 (through May 31, 2014)
1121 hours in fiscal year 2015 (through May 31, 2015)
741.25 hours in fiscal year 2016 (through May 31, 2016).

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certifications were required for any of these jobs. The document merely shows that Mantell was sent out on certain jobs with a certain employer, starting on a certain date. Indeed, the dates of referral listed on General Counsel Exhibit 16 for Mantell do not, or in some cases only loosely, match the dates he began work at a job as shown in in General Counsel Exhibit 2. This makes it impossible to conclude, even for the one year—Fiscal 2016—for which the record contains documentation from which such comparison can be attempted, how many of Mantell's 741 hours in Fiscal 2016 resulted directly or indirectly from referrals. Even as to the referrals, there is no evidence as to whether these jobs were filled by Mantell (or others) based on their position on the out-of-work list, or based on employer preference for certain employees, stewardship, or other basis. We do not even know the dates or place that Mantell was on the out-of-work list during the nearly two-year period in question, with the exception of an out-of-work list in evidence from one day, June 21, 2017, that showed Mantell listed seventh for that date.

Analysis

The General Counsel alleges that Local 91 violated Section 8(b)(1)(A) of the Act by refusing, since November 2015, to refer Mantell for work from the Local's out-of-work referral list in retaliation for the protected and concerted activity of his brother.

While the Local does not owe employees a duty of fair representation with regard to referrals from a nonexclusive hiring hall,⁶ it is a violation of Section 8(b)(1)(A) to refuse to refer members for employment in retaliation for protected and concerted activity. *Laborers Local 91*, 365 NLRB No. 28, slip op. at 1 (2017). The Board finds that the loss of referrals "deprive[s] [the charging party] of employment opportunities" and thereby affects employment in violation of Section 8(b)(1)(A). *Laborers Local 91*, supra at slip op. 1.

Analysis of an 8(b)(1)(A) allegation of this type is analogous to analysis of an 8(a)(3) discrimination claim against an employer, and thus, in assessing motivation-based 8(b)(1)(A) discrimination cases, the Board uses the analysis for assessing employer discrimination established by the Board in *Wright Line*, 251 NLRB 1083 (1980). *Plasters Local 121*, 264 NLRB 192 (1982); *Electrical Workers Local 429*, 347 NLRB 513, 515 (2006), remanded on other grounds 514 F.3d 646 (6th Cir. 2008).

Under the Board's decision in *Wright Line*, the General Counsel bears the initial burden of showing that a respondent's decision to take adverse action against an employee was motivated, at least in part, by animus against protected activity. Such showing proves a violation of the Act subject to the following affirmative defense: the respondent, even if it fails to meet or neutralize the General Counsel's showing, can avoid the finding that it violated the Act by demonstrating by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. *Willamette Industries*, 341 NLRB 560, 563 (2004).

In this instance, the outcome of this allegation turns on the

manner in which the *Wright Line* analysis is applied. Specifically, the issue turns on the question of whether the General Counsel successfully met his initial burden under *Wright Line* sufficient to prove unlawful motivation on the part of the Respondent and shift the burden to the Respondent to prove that it would have taken the same action in the absence of Mantell's brother's protected activity.

The centrality of the assignment of burdens of proof arises because the parties in this case chose not to develop a record that would shed light on the appropriateness or inappropriateness of any referral for Mantell to any specific job or in any specific instance. There is no record evidence as to which jobs the Local discriminatorily failed to send Mantell. There is no evidence of any particular job to which it can be said that the Local violated its rules (discriminatorily or otherwise) in not referring Mantell to this job. Based on the record evidence, we do not know the qualifications, employer requests, or rationale of those chosen for any of the referrals taking place during the nearly two-year time period in which the Local is alleged to have discriminated against Mantell. We do not know Mantell's record of re-registering for the list, or when he was or was not on the list or what place he was on the list. Indeed, an out-of-work list is in evidence for only one day's job referral, a list dated June 21, 2017, used for referrals to a job on June 26, 2017, and there is no evidence as to the type of job or circumstances surrounding the employer's call for labor, and no direct evidence of the basis for the referrals made.

In his brief, the General Counsel asserts that it is the Respondent's burden and obligation to fill out this hole in the record. The General Counsel asserts that it has met its initial burden to prove that there was a discriminatory motive for Mantell's failure to obtain these referrals. Thus, the General Counsel relies on the (already-proven) animus towards Mantell's brother and the fact that referrals evaporated for Mantell after November 2015, to contend that he has proved that the Respondent's failure to refer Mantell for a nearly 2-year period was discriminatorily motivated. According to the General Counsel, the burden shifts to the Respondent to show that the referrals occurring during the violation period would have been made even in the absence of Mantell's (brother's) protected activity. Thus, according to the General Counsel, the absence of record evidence about the referrals—whether or not Mantell was qualified, whether or not an employer asked for other employees, whether or not others were ahead of Mantell on the out-of-work list, or even if or where Mantell was on the out-of-work list for a particular referral—this is all the Respondent's problem.

The Respondent, on the other hand argues that the lack of evidence about the referrals shows that the General Counsel has failed to meet his initial burden. The Respondent argues that the General Counsel has not shown a single specific job referral in which there has been discriminatory treatment, or in which the Union's rules were not followed.⁷

⁶ *Carpenters, Local 370 (Eastern Contractors Ass'n)*, 332 NLRB 174, 174–175 (2000). Because the hiring hall is nonexclusive, the union's failure to refer does not prevent an employee from being hired.

⁷ As counsel for the Respondent argued at the hearing:

The Board hasn't proved that he was entitled to a referral and was not referred out on any given day. And so they have to prove that he didn't get a referral and he should've gotten a referral on a particular date within the 10(b) statute. They haven't proved that at all. No proof whatsoever of that. All they've got is a witness saying, I haven't been

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I believe that the Respondent has identified a significant problem with the General Counsel's approach in this instance. The General Counsel is relying on an application of the *Wright Line* framework used in cases where an employer has discharged or disciplined an incumbent employee. In that scenario, the elements required for the General Counsel to show that protected activity was a motivating factor in an employer's adverse action are summarized as a three-prong test of protected activity, employer knowledge of that activity, and animus on the part of the employer. *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014); enfd. 801 F.3d 767 (7th Cir. 2015).

Under the three-prong discharge/discipline *Wright Line* framework, the General Counsel would likely be able to satisfy its initial burden of proof and shift the burden to the Respondent to prove that it would have taken the same referral actions in the absence of protected activity. Thus, even cursory review of the Board's findings in *Laborers Union Local 91*, 365 NLRB No. 28 (2017) demonstrates that Mantell's brother (Frank Mantell) engaged in protected activity and that the Respondent was aware of it. This is all undeniable, as a matter of collateral estoppel. *Great Lakes Chemical Corp.*, 300 NLRB 1024, 1024–1025 fn. 3 (1990), enfd. 967 F.2d 624 (D.C. Cir. 1992). The Board also found in that case that there was unlawful animus towards Frank Mantell, which the Respondent acted upon illegally. That unlawful retaliation would support the inference that Mantell's failure to be referred was motivated by additional retaliation for his brother's protected and concerted activity.¹⁵⁸ Most significantly, especially combined with the demonstrated animus towards Frank Mantell's protected activity, the abrupt cessation of referrals for Ron Mantell after November 2015, supports this conclusion. This was the same month in which Frank Mantell filed his NLRB charges. The Board has long recognized that in discrimination cases unexplained timing can be indicative of animus. *Electronic Data Systems*, 305 NLRB 219, 220 (1991), enfd. in relevant part 985 F.2d 801 (5th Cir. 1993); *North Carolina Prisoner Legal Services*, 351 NLRB 464, 468 (2007), citing *Davey Roofing, Inc.*, 341 NLRB 222, 223 (2004).⁹

However, and notwithstanding the foregoing, I do not believe that a union failure-to-refer case such as this one is properly analogized to a discharge or disciplinary case. Rather, the most apt analogy is to a *Wright Line*-based refusal-to-hire case. See *FES (A Division of Thermo Power)*, 331 NLRB 9 (2000). Such cases incorporate standards into the General Counsel's *Wright Line* burden that recognize—in contrast to a discharge or discipline

case—that the inferred linkage between animus and the refusal to hire is tenuous absent evidence that the potential employee was within the set of feasible applicants for the job he was denied. Thus, in a refusal-to-hire case, “the General Counsel must, under the allocation of burdens set forth in *Wright Line*,”

first show the following at the hearing on the merits: (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. Once this is established, the burden will shift to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation.

FES, 331 NLRB at 12 (footnote omitted).

This is relevant in the instant case as well. ere, the General Counsel argues that without any evidence of what work was needed or what happened in any specific referral, or even where or if Mantell was on the referral list, the *Wright Line* burden has been met, discrimination has been proven as a contributing factor to nearly 2 years of nonreferrals, and the burden has shifted to the Respondent to prove that for each referral it made during this extended period Mantel did not have the skills, qualifications, certifications, or otherwise would not have been referred even in the absence of (his brother's) protected activity.

By relying on the discipline/discharge standard, the General Counsel can contend that he has adequately proven that discrimination caused Mantell to not get referrals, perhaps every referral that the Local made during this extended period, an unrealistic presumption that is not in accord with the goals of *Wright Line* when we know so little about the referrals that were made. Indeed, this is precisely the analogous unfairness that the Board reacted to and guarded against in *FES*, when it defined the use of *Wright Line* in hiring discrimination cases against employers to include in the General Counsel's initial burden of proof the showing not only of discriminatory motive, but that the discriminatee possessed “experience or training relevant to the announced or generally known requirement of the positions for hire.” 331 NLRB at 12. What is due the employer in a refusal-to-hire case is certainly due the union in the refusal-to-refer case.¹⁰

referred. But they haven't proved that he should have been referred. That he was eligible for referral. And that the referral was a violation of a policy or a procedure or motivated by some protected activity; by either the brother's Facebook or by—in fact, by the brother's Facebook. So they haven't demonstrated that at all. What referral did he not get was in the 10(b) time period?

⁸ The Board has held that retaliation against an employee person in order to retaliate against his relative who was a union activist is unlawful. *Tasty Baking Co.*, 330 NLRB 560 (2000); *American Ambulette Corp.*, 312 NLRB 1166, 1169–1170 (1993); *Thorgren Tool & Molding*, 312 NLRB 628, 631 (1993); *NLRB v. Advertiser's Mfg. Co.*, 823 F.2d 1086, 1088–1089 (7th Cir. 1987) (“to retaliate against a man by hurting a member of his family is an ancient method of revenge, and is not unknown in

the field of labor relations”) (citing cases), enfg. *Advertiser's Mfg. Co.*, 280 NLRB 1185 (1986).

⁹ Finally, the General Counsel relies on the testimony of former Business Agent Robert Connelly, who testified that during a membership meeting in the Spring of 2017, Palladino warned members that “anyone going to the NLRB . . . has got another thing coming,” “we’re coming back after you,” and “you better think twice about going to the NLRB before you bring us up on charges.” Palladino denied that he made those statements. Given my resolution of the case, I do not resolve that credibility dispute.

¹⁰ I note that the General Counsel also analogizes this case to a refusal-to-hire case. Thus, in contesting the Union's 10(b) defense (GC Br. at 26), the General Counsel relies (solely) on a refusal-to-hire case (*La-Z-*

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A further complication in this matter is added by the statute of limitations defense raised by the Respondent. The General Counsel alleges that the discriminatory refusal to refer began after Mantell's last referral in November 2015 and continued thereafter. The charge was filed in April 2017. The General Counsel concedes (Tr. 192) that the 10(b) period and any violation found would begin October 2016. While I do agree with the General Counsel that each discriminatory failure to refer is a new violation—and hence, I disagree with the Respondent's argument at trial that under the General Counsel's theory the entire alleged violation is time-barred—the 10(b) issue adds to the uncertainty surrounding the General Counsel's generalized every-referral-is-a-presumptively-discriminatory referral theory. Thus, the General Counsel's claim is that long after Mantell's brother engaged in his protected activity—nearly one year after he filed his charge and 11 months after the Local allegedly began discriminating against Mantell—all of the referrals from October 2016 forward—of which we know almost nothing—have been shown to have continued to be discriminatorily denied to Mantell. It could be true, but we do not know enough to conclude that it more than likely is. It is unproven.

Thus, in order to meet its initial burden, the General Counsel must show more than merely that referrals were made and Mantell did not get called for them. The burden must be on the General Counsel to demonstrate, at least, that an inference of discrimination is warranted because under an application of non-discriminatory rules Mantell would have or should have been chosen for the referrals. The General Counsel must show, at least with a representative sample of referrals during the period it alleges that Mantell was not referred out for discriminatory reasons, that Mantell had the qualifications for the work, that he was on the out-of-work list, and that the employees chosen for the work instead of Mantell were chosen although Mantell was entitled to be chosen under the Local referral rules. The General Counsel has not demonstrated this to be the case in even one instance.

Under a refusal-to-hire *Wright Line* standard, the case here fails. Much like in *Allstate Power VAC, Inc.*, 354 NLRB 980 (2009), an employer refusal-to-hire case where the record did not establish when or on what basis employees other than the discriminatees were hired, “[t]here is simply too much left unproved to find that the General Counsel has established that, at the time in question, the Respondent was hiring for a field technician position for which the seven overt acts may have had the necessary experience or training.” Id. at 981. The Board concluded: “In these circumstances, we find that the General Counsel has failed to meet his initial burden under FES.” Id.

I think the same must be concluded here. I recognize that it is suspicious that Mantell stopped receiving referrals after November 2015. Yet we know little—nothing really—about how many referred jobs one could reasonably expect for him to have

received in 2016 and 2017 because we know nothing about the jobs, length of employment, qualifications, foremen jobs, steward jobs, adherence to sign-in procedures, requests by employers for particular employees, other employees, or much else. Basically, the nub of the General Counsel's case comes down to the fact that beginning during a time of proven animus towards Mantell's brother, Mantell was among the 15 employees referred out repeatedly in 2015, but he was not referred out in 2016 or 2017. We know that a total of only 13 different employees were referred out during—on some basis—by the Local in 2016. See GC Exh. 16. We know that a total of 14 different employees—were referred out—on some basis—in 2017 (through October 1). This compares with 15 different employees (including Mantell) who were referred out—on some basis—in 2015. See GC Exh. 16. For each of these years, we do not know how many of these were referred out in order from the out-of-work list, how many were stewards, how many were requested by the employers, or what type of work was at issue. These are not compelling numbers in a local union of 240 members where 150–160 members go to work on their own, and never rely on the out-of-work list.

Given the vagaries and uncertainties of the referral system, I conclude that that the evidence is inadequate to satisfy the General Counsel's *Wright Line* burden if, as I believe appropriate, a refusal-to-hire *Wright Line* analysis is utilized. As in *Allstate Power VAC, Inc.*, “[t]here is simply too much left unproved.” I recognize, as with any case in which the alleged violation is unproven, rather than disproven, there is the risk of the culpable being let go without sanction. This is a necessary byproduct of the rule of law. In my view that risk must be countenanced based on the record evidence here. I recommend dismissal of the refusal-to-refer allegations.

C. The threat to file internal union charges if Mantell contacted the NLRB

Mantell testified to a conversation he had with Palladino at the union hall in early November 2016. Mantell went to the hall and learned from the secretary that he needed to work with a union contractor again in order to be eligible for supplemental unemployment benefits through the labor agreement. Mantell then went and spoke to Palladino. Mantell complained to Palladino that he had not received a call for work all year and that “I needed work. I wasn't even eligible to get sub pay. I haven't had any work.” Mantell told Palladino that he was second on the out-of-work list. Palladino “began to ridicule me about my Brother Frankie.” Mantell told Palladino, “I'm Ron Mantell, Not Frank Mantell. I'm coming here to ask you for a job.” According to Mantell, Palladino said “that no contractors have been calling for me” and that “I was allowed to find my own work.” Palladino said that “[i]t wasn't his job to find me a job because no contractors were calling.” Mantell testified that Palladino said that “he knew that I was planning on calling the National Labor Relations Board and if I did that he would bring me up on charges.”¹¹

Boy Tennessee, 233 NLRB 1255, 1255 fn. 1, 1257–1258 (1977)) as the basis to argue that the instant refusal-to-refer violation, which arguably arose 17 months before a charge was filed, is a continuing violation, and thus, not entirely time-barred.

¹¹ Mantell testified that he called an International Union official in Washington, D.C. to tell him about the conversation he had with

Palladino. Mantell testified that a few days after their conversation, Sabatoni called Mantell back and told Mantell that he had talked to Palladino, and that Palladino “said he hasn't been able to place me on a job” and that “his advice to me is that I can go and find my own work.” I credit that Mantell was told this by Sabatoni, but the contention that Palladino said it is hearsay. Sabatoni did not testify and he has not been

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Mantell testified that Matthew Chavi, at that time an employee and member of the Local Union, was present but did not participate in the conversation. Chavi testified and described the conversation between Mantell and Palladino. Initially his account of the conversation was consistent with but fuller than Mantell's account. He testified that Mantell "came back and said that he needed to go to work and wanted to know if Dick would send him out to work, that he needed to go to work." Palladino told him that there were "lots of guys wanting to go to work at the time" and that "if something come up, he'd see what he could do." Chavi also testified that Palladino told Mantell that "he has the option of going out and finding his own work . . . his old contacts or callbacks or if he could find someone if he needed to go to work. . . . But he said he'd see if he could do something." Chavi described Mantell as "getting a little hot" as the conversation turned to Mantell's belief that Palladino was not providing him work because of his family. Chavi testified that Mantell brought up his family—"which is his uncle and his father and his brother, Frank"—and complained that the family members' "stock had gone down and that he thought Dick wasn't putting him out to work." Although the product of leading questioning ("And did you hear Ron threaten Dick about going to the NLRB?"), Chavi testified that Mantell raised the issue of the NLRB, stating that Mantell said that "If Dick wasn't going to send him to work, he was going to the NLRB." According to Chavi, Palladino told Mantell "go ahead and do what you have to do." Chavi said nothing in his testimony about Palladino saying anything about bringing Mantell up on charges.

Palladino testified briefly. He was asked, in leading fashion: "did you threaten Ron Mantell that if he went and filed charges with the board that you would file internal Union charges against him?" Palladino answered "no" to this question.

In terms of demeanor, both Mantell and Chavi testified with credible demeanor. Chavi's account is plausible and in many ways fuller than Mantell's. This conversation occurred approximately a month after the administrative law judge had ruled against the Local in Frank Mantell's unfair labor practice case—something both Mantell and Palladino would have been attuned to—so it does not surprise me that the NLRB was mentioned in this conversation. Regardless of whether Mantell (his account) or Palladino (Chavi's account) first raised the NLRB, the critical question is whether Palladino made a reference to bringing charges against Mantell if an NLRB unfair labor practice charge was filed. Mantell's account of this was credible in demeanor. Chavi did not specifically address it. His account of what Palladino said in response to his claim that Mantell raised the possibility of going to the NLRB did not include the threat, but Chavi's answer was short and offered tenuously ("If I remember correctly, Dick looked at him and said go ahead and do what you

have to do"). Chavi did not affirmatively deny that the threat of retaliatory charges was made. Palladino did deny it, as noted. But his one-word denial of a fully leading and conclusory question was not convincing. Indeed, in his testimony, Palladino did not even offer an account of the conversation, but simply answered a single leading and conclusory question about whether he threatened Mantell. My view is that more likely than not, Palladino told Mantell that if he (Mantell) filed an NLRB charge, that Palladino would bring him up on internal union charges. I find that, as Mantell testified, Palladino told Mantell that.¹²

Analysis

The threat that I have found that Palladino made to Mantell is obviously unlawful. *Teamsters Local 391 (UPS)*, 357 NLRB 2330, 2330–2331 (2012). It would have a reasonable tendency to "impair[] access to the Board's processes." *Office of Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1418–1419 (2001).¹³

B. The Internal Union Charges Brought Against Mantell

In March 2017, Palladino charged Mantell with violating the Union-Building Industry Employer's Association labor agreement and the Union's constitution by working in February 2017 for a signatory-contractor (Scrufari) on a job where no union steward had been hired or appointed.

The Local Union's agreements provide that a union steward must be on every job worked by an employee working under the labor agreement, and the Union's constitution requires that members comply with such rules. Palladino testified credibly that first year apprentices go through a "Steward Preparedness" class to learn about the importance to the union that there be a steward for each job so that the Union can protect working standards.

The Local learned about Mantell's work for Scrufari when Mantell brought his check stub into the Local's benefits office seeking credit for the work. The Union had been unaware of this work and believed that a steward should have been on this job. Mantell argued that the caulking work he was involved with was not covered by the agreement. Palladino filed internal union charges against Mantell soon thereafter. After a trial conducted April 8, 2017, Mantell was found guilty as charged by the Union's executive board. The board assessed a fine of \$500 and suspended Mantell from union membership for six months. Local Union President William Grace testified that the \$500 fine amounted to approximately two days' pay, and that the six-month suspension of membership in good standing only prevented Mantell from attending union meetings but did not impair his ability to work. There is no evidence countering this explanation of the penalties offered by the local union president. The penalties were held in abeyance pending the resolution of

shown to be an agent of the Respondent Local Union. In any event, the testimony about the conversation with Sabatoni neither corroborates nor undercuts the alleged threat by Palladino.

¹² I note that given my analysis, it is not necessary to consider former Local Business Manager Robert Connolly's testimony that in the spring of 2017—approximately six months after the incident between Palladino and Mantell—Palladino announced at a Local membership meeting that, essentially, there would be retaliation against anyone who filed an NLRB charge against the Local Union. This statement was not alleged by the

General Counsel to be an unfair labor practice. In reaching my conclusion in the text regarding the statement by Palladino to Mantell in November 2016, I have assumed without deciding that the Spring 2017 statement testified to by Connolly did not happen.

¹³ In addition to alleging that this threat violated Sec. 8(b)(1)(A) of the Act, the complaint alleges that Palladino's threat was motivated by Mantell's brother's protected activity. I do not reach that allegation. Findings as to the motivation for this threat would not materially affect the remedy or, indeed, the violation found.

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Mantell's appeal to the International Union, which was pending at the time of the unfair labor practice hearing.

Analysis

The complaint alleges that the internal union charges and the suspension of membership were motivated by retaliation for Mantell's brother's protected and concerted activity, and therefore violative of Section 8(b)(1)(A) of the Act.

The General Counsel's brief focuses on marshaling evidence to prove the discriminatory motivation for the internal union discipline. However, a threshold problem with the General Counsel's allegations is that the internal union discipline meted out against Mantell does not fall within the ambit of union conduct regulated by Section 8(b)(1)(A).

While Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7" (29 U.S.C. § 158(b)(1)), the Supreme Court has rejected a "literal reading" of Section 8(b)(1)(A) that would find that the mere fact that a union acts in response to the exercise of a Section 7 right constitutes "restraint" or "coercion" within the meaning of Section 8(b)(1)(A). *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 178–179 (1967). The Act does not broadly deputize the Board to adjudicate internal disputes between labor organizations' officers and members.

As the Board has explained: "Simply put, we will not scrutinize a union's internal discipline of its members, *even for allegedly discriminatory reasons*, so long as the action does not restrict access to the Board's processes or invoke any aspect of the employment relationship." *In re Textile Processors*, 332 NLRB 1352, 1354 (2000) (emphasis added). Where, as here, the internal union discipline "was restricted to the status of a member, as a *member*, rather than as an *employee*" there is no violation of 8(b)(1)(A). *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1420 (2000).

In *Sandia*, the Board overruled cases "in which the Board has found violations of Section 8(b)(1)(A) even in the absence of any meaningful correlation to the employment relationship and the policies of the Act." *Sandia*, 331 NLRB at 1419. In *Sandia*, the Board returned to its longstanding standard in which it "consistently distinguished between, on the one hand, internal union enforcement and, on the other, external enforcement, impacting the employment relationship. Indeed, the Board viewed this distinction as a central tenet of Section 8(b)(1)(A) and its proviso." *Sandia*, supra at 1420. As the Board put it, Section 8(b)(1)(A) "was not enacted to regulate the relationship between unions and their members unless there was some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act." *Sandia*, supra at 1424. In dismissing an 8(b)(1)(A) complaint over internal union discipline, the Board in *Sandia* stated:

What is of critical significance in our judgment is that the only sanctions visited on the Charging Parties by the victorious intraunion faction were internal union sanctions, such as removal from union office and suspension or expulsion from union

membership. The relationship between the Charging Parties and their Employer, Sandia, was wholly unaffected by the discipline. Nor are any policies specific to the National Labor Relations Act implicated by the union discipline at issue. . . . [W]e find that Section 8(b)(1)(A)'s proper scope, in union discipline cases, is to proscribe union conduct against union members that impacts on the employment relationship, impairs access to the Board's processes, pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or otherwise impairs policies imbedded in the Act.

331 NLRB at 1418–1419.

Here, the internal union actions taken against Mantell do not affect his employment relationships, impair access to Board processes, or pertain to unacceptable methods of union coercion, such as physical violation. The General Counsel does not contend otherwise.

Rather, in an effort to will this square peg into the round hole of Section 8(b)(1)(A), the General Counsel baldly asserts that the union's internal discipline "impairs policies imbedded in the Act. "But absolutely no case is cited and no argument made for this misreading of the Act's framework."

In *Sandia*, the Board cited to examples of the types of situations "when intraunion discipline clashes directly with statutory policy interests and prohibitions incorporated in the Act." 331 NLRB at 1424. These included instances where unions fined employees to compel conduct in violation of a collective-bargaining agreement (*Mine Workers Local 12419 (National Grinding Wheel Co.)*, 176 NLRB 628 (1969)), or punitively fined a member seeking access to the Board's processes to file a decertification campaign (*Molders Local 125 (Blackhawk Tanning Co.)*, 178 NLRB 208, 209 (1969)), or fined members for refusing to take action in violation of Section 8(b)(4)(B). *Plumbers (Hanson Plumbing)*, 277 NLRB 1231 (1985).

In this case, there is nothing remotely similar at issue. In direct contravention of *Sandia*, the General Counsel appears to presume that union discipline motivated by Section 7 activity ipso facto "impairs policies embedded in the Act" in violation of Section 8(b)(1)(A). However, this argument was explicitly rejected by the Board majority in *Sandia*, which dismissed the dissent's view that union discipline "contravenes a policy of the Act" just because the discipline punished "the Section 7 right to concerted opposition to the policies of union officials." 331 NLRB at 1424. The Board majority in *Sandia* explained that while "we reaffirm the principle that Section 7 encompasses the right of employees to concerted opposition to the policies of their union, we reject our dissenting colleague's insistence that Section 8(b)(1)(A) will proscribe virtually each and every form of intraunion discipline pertaining to virtually any form of intraunion dispute without regard to the employment context or the policies of this Act." 331 NLRB at 1425. Simply put, the Board will not find an 8(b)(1)(A) violation in every case where internal union discipline was a response to Section 7 activity. There must be an actual and not a "speculative" and "attenuated" effect on the member as an employee. *Sandia*, 331 NLRB at 1425.¹⁴

¹⁴ See *Electrical Workers Local 2321 (Verizon)*, 350 NLRB 258, 262 (2007) ("While Respondent may discipline employees for circulating or

supporting a decertification petition, it may not threaten to take any action to affect their employment"), quoting *Service Employees Local 399*

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Here, I recognize that Frank Mantell's criticisms of the Local Union's leadership necessarily—to have even been protected by Section 7,¹⁵—must “bear[] some relation to the employees’ interests as employees.” *Sandia*, 331 NLRB at 1424. However, the essence of Frank Mantell's criticisms was an argument over the conduct and principles and judgment of the union leadership. It was a criticism of Palladino's alleged failure to apply union policies and an effort to “press the union to change its policies.” 365 NLRB No. 28, slip op. at 2. It was not an effort to change the union's collective-bargaining posture, or its relationship with employers, or to convince the union to alter the terms and conditions of employment with employers. The only sense in which Frank Mantell's criticisms related to employment was that he criticized Palladino's granting of a journeyman's book to a local candidate, thereby increasing by one the number of individuals eligible to vie for journeyman jobs in the area. This may, as the Board found, help establish that Frank Mantell was engaged in Section 7 activity. But finding an 8(b)(1)(A) violation based on wholly internal union discipline motivated by such comments would be precisely the type of “quantum leap” based only on a “potential” and “attenuated” “speculative impact” on the employer-employee relationship that the Board has rejected. *Sandia*, 331 NLRB at 1425. In this case, the Local's discipline of Mantell, even if “for allegedly discriminatory reasons,” (*In re Textile Processors*, 332 NLRB at 1354), had no effect on the union's collective-bargaining posture or the employees' employment terms and conditions. Finding a violation in these circumstances would be at odds with the Supreme Court's “essential accept[ance]” of “the Board's longstanding position . . . that Section 8(b)(1)(A) is to be narrowly construed so as not to reach internal union discipline unless such discipline affects a member's employment status.” *Sandia*, supra at 1421. I dismiss this allegation.

C. The out-of-work list allegations

Mantell testified that since November 2015, he regularly—on average twice a week—would go to or call into the local union hall to check the out-of-work list maintained by the Local Union. This list was updated as frequently as daily, although if no one had been sent to work the list would not be updated or changed.

(*City of Hope*), 333 NLRB 1399, 1401–1402 (2001) (“While Respondent may discipline employees for circulating or supporting a decertification petition, it may not threaten to take any action to affect their employment”); *Sandia*, 331 NLRB at 1424 (“union restraint and coercion of Section 7 rights is regulated under Section 8(b)(1)(A), and . . . the central theme of both the Supreme Court's 8(b)(1)(A) decisions and of Board's 8(b)(1)(A) cases prior to [*Carpenters Local 22 (Graziano Construction Co.)*, 195 NLRB 1 (1972) (overruled by *Sandia*)] is that section was not enacted to regulate the relationship between unions and their members unless there was some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act”); *Teamsters Local No. 170 (Leaseway Motor Car Transport Co.)*, 333 NLRB 1290 (2001) (internal union discipline including \$26,000 fine and removal from office in reprisal for members' protected dissident activity in support of union presidential candidate does not interfere with his employment or contravene other policy interests arising under Act and therefore does not violate Section 8(b)(1)(A)); *In re Textile Processors*, 332 NLRB 1352 (2000) (applying *Sandia* and dismissing 8(b)(1)(A) case, even assuming union discriminatorily enforced rule in

Neri testified that how often the list was updated “depends on how many people sign in, how many people we send out to work. It could be updated once a week, twice a week, three times a week.”

When Mantell went in personally, he would ask to see the list which was kept inside the sliding glass window behind the internal office counter. The administrative office was behind the window counter. Neri or one of the other employees would then show him the list. He regularly viewed the out-of-work list during this period and there were no problems encountered with him being allowed to view it.¹⁶

Neri confirmed that for the past 3 or 4 years, the out-of-work list has been kept inside the office on the ledge inside the glass office window. He testified that before that it had been kept on the bulletin board in the open area of the hall, but people would take it and the Local employees would not even realize it was missing. So, the decision was made to keep the list inside the glass window. The Local employees would show the list to anyone who came in and asked to see it. However, Neri testified that “most guys didn't even want to see it. They just ask us where am I on the list.”¹⁷

On June 26, 2017, Mantell went to the Local Union and asked to view the out-of-work list. Neri said that the list was being updated but he showed Mantell the most recent list and pointed out two individuals who had been sent out as stewards. Each was lower on the list than Mantell. Mantell decided to go down to the job site where they had been sent to see the type of work they were performing and whether they were serving as stewards. He did this, without incident, and spoke to two laborers there with whom he had worked in the past. Based on what Mantell was told by them he believed that the two referrals were not serving as stewards.

The next day, June 27, Mantell returned to the Local Union hall to review the out-of-work list again and to obtain copies of certain contracts. According to Mantell, Neri told him that “I wasn't allowed, that Richard Palladino told him that I'm not allowed to view the out-of-work list . . . [b]ecause of what happened yesterday.” Mantell assumed that by “what happened yesterday,” Neri was referring to Mantell's “policing activity by me going to the job and asking questions and stuff of that nature.”

order to retaliate against employee for engaging in internal union activities, as internal union discipline “even for allegedly discriminatory reasons” does not violate Act “so long as the action does not restrict access to the Board's processes or invoke any aspect of the employment relationship”).

¹⁵ In *Laborers Local 91*, 365 NLRB No. 28, the Board reiterated that it is “‘elementary’” that Section 7 protects “‘an employee's right to engage in intraunion activities in opposition to the incumbent leadership of his union.’” *Id.* at slip op. 1, quoting *Steelworkers Local 397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

¹⁶ In his testimony Mantell made reference to a time in November 2015, when he contacted an International union representative, Chris Sabatoni, regarding a problem he was having viewing the list at the Local Union. Since that time, Mantell regularly reviewed the list without incident.

¹⁷ Neri worked at the Local every morning and left at about 12:30 p.m. His office area was shared with a full-time secretary, identified as Diana. In addition, a secretary identified as Nancy Simms works 1 day a week.

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Mantell protested that in 2015 he had once had to call an International union representative in order to obtain access to the list, but Neri told Mantell that he was “just doing what he’s told” and that “Richard told [him] I’m not allowed to see the list.” Mantell was also denied access to the contracts. Neri told him that to see the contracts he would have to contact the Department of Labor.¹⁸

Mantell went home and called the International Representative he had spoken to in 2015. Sometime after that, when Mantell returned to the Local Union, later in June or in early July, the Local had begun posting the out-of-work list behind the glass office window, taping it up so it was visible to anyone standing in front of the sliding glass window. This had the advantage for Mantell (and others) that they no longer had to ask to see the list—it was posted in plain view.

However, with this change the posted list was only updated weekly. Neri testified that he followed the same procedure as always in updating the list, as frequently as daily if necessary, but that since approximately June it is only posted weekly. The result is that members could not see the list as it evolved during the week but were only able to see the revised list weekly. Neri testified that this change was one permitted by the referral rules: “In the referral rules, it says it has to be posted once a week for the members to look at it.”¹⁹ Neri explained that the change in procedure was made because “recently, there’s been all this barrage of taking pictures of it, being a little abnormal from the normal practice.” Neri described an uptick in requests to see the list which burdened the secretary and became “an aggravation.” Posting the list ended the problem.

Mantell testified that the list being updated weekly made it less easy for him to “police” it, “as far as seeing who disappears off the list . . . now if they’re updating the list once a week, I can’t view the list and see who comes off the list during the week.”

Analysis

The General Counsel alleges that the Respondent violated Section 8(b)(1)(A) by refusing to allow Mantell to view the out-of-work list on or about June 27, 2017, and then again by changing its practice of updating the out-of-work list daily and moving to a practice of posting the out-of-work list weekly. The General Counsel alleges that both of these actions were in response to Mantell’s investigation of the referral of two individuals below him on the out-of-work list.

This is a nonexclusive hiring hall, hence, as noted above, the duty of fair representation does not apply, as that duty is derived from and coextensive with the union’s authority under the Act to

act as the exclusive representative for the members of its collective-bargaining unit. See *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 376 fn. 22 (1984). However, as with an alleged refusal to refer, it violates Section 8(b)(1)(A), even at a nonexclusive hiring hall, to refuse members access to an out-of-work list as retaliation for protected activity. Just as a discriminatory refusal to refer would violate 8(b)(1)(A), a discriminatory refusal to thwart member efforts to investigate whether their referral—i.e., their right to employment—is being protected, would run afoul of Section 8(b)(1)(A).

Mantell, by his own testimony, frequently, and without incident, reviewed the out-of-work lists during 2016 and 2017. However, as found, above, on June 27, Mantell’s request to view the out-of-work list was denied. This was done (according to Mantell’s credited testimony of what Neri told him Palladino had said), on the order of Palladino.²⁰

In confronting Mantell, Neri attributed it to “what happened yesterday.” Mantell “assumed” that this was a reference to his policing activities when, after viewing the list on June 26, he went down to a worksite to investigate whether the two employees referred out were acting as stewards. However, as the Respondent points out, there is zero evidence that any local union official knew of Mantell’s actions. Mantell described walking around the construction site without incident, agreed that he was “incognito” in a hard hat and safety glasses, and he talked only to two co-employees he had worked with in the past.

But if there is no direct evidence of a local union official seeing Mantell at the workplace, or learning of Mantell being there, to what was Neri referring when he told Mantell on June 27 that he could not view the out-of-work list because of “what happened yesterday?” The Respondent’s witnesses supplied no answer at all. Neri, who could not remember “the whole conversation,” and could not remember if he showed the list to Mantell, did recall that he told Mantell that “it was the same list that you saw yesterday.” Palladino did not address the matter in his short testimony. He did not deny having told Neri not to show the out-of-work list to Mantell. Particularly in the absence of any other explanation, the comment and its timing are very suspect.

As referenced above, the Board has long recognized that in discrimination cases unexplained timing can be indicative of animus. *Electronic Data Systems*, 305 NLRB at 220; *North Carolina Prisoner Legal Services*, 351 NLRB at 468. Moreover, an inference of a respondent’s knowledge of protected activity may be drawn in appropriate circumstances based on the timing of the respondent’s actions. *Montgomery Ward & Co.*, 316 NLRB 1248, 1253–1254 (1995), *enfd.* 97 F.3d 1448 (4th Cir. 1996); *La Gloria Oil & Gas Co.* 337 NLRB 1120, 1123 (2002) (“the timing

¹⁸ Neri disputed Mantell’s characterization of this conversation but admitted he only “kind of remember[ed]” the conversation. Neri said that it was a “passing conversation” and that when Mantell asked for the list Neri told him “it was the same list that you saw yesterday. And he says something to the effect, he has a right to see the list. And I said, you just saw the list. I don’t know, I don’t remember the whole conversation.” Neri testified that he could not remember if he gave Mantell the list or not. I credit Mantell’s surer, less vague, and more credibly offered account.

¹⁹ Art. 7.B. of the Local Union job referral rules states:

Lists containing the information described in § 6(A) and (B) [i.e.,

current out-of-work list] shall be conspicuously posted, or otherwise immediately available for inspection, at the offices of Local 91 on a weekly basis, so that the previous week is posted or immediately available by the close of business on the following Monday. The information shall remain posted or immediately available for at least two weeks.

²⁰ There is no hearsay problem attached to this un rebutted testimony. Both Neri and Palladino’s statements are non-hearsay admissions pursuant to Federal Rule of Evidence 801(d)(2). *U.S. Ecology Corp.*, 331 NLRB 223, 225 (2000), *enfd.* 26 Fed.Appx. 435 (6th Cir. 2001). In any event, any objection to this evidence would be waived at this point. *Id.*

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of the discharge in relation to [the supervisor] learning of the activity supports a finding that [the supervisor] knew of the activity and knew who had been involved"); see also *Metro Networks, Inc.*, 336 NLRB 63 (2001) (Board can infer knowledge from the timing of the discharge); *Medtech Security, Inc.*, 329 NLRB 926, 929–930 (1999).

Here, by all evidence, Mantell had been routinely and frequently phoning and coming into the Local Union to view the out-of-work list for at least a year and a half. As far as the record shows, this occurred without incident. While this might be said to temper the gravity of the violation—at the same time, it adds to the probative weight of the timing of the Union's sudden refusal to allow Mantell to view the out-of-work list on June 27, based on something "that happened yesterday." Only after—the day after—Mantell took affirmative steps to investigate the job referrals by heading down to a job site to scrutinize the employment situation, the Local Union denied him access to the out-of-work list based on something that "happened yesterday." As Mantell assumed, his trek down to the workplace to police the referrals is the more than likely explanation. The Respondent would argue that it was a coincidence, but I find that unlikely and unbelievable.

In terms of *Wright-Line*, I believe that a violation has been proven. Mantell's investigation into compliance with referral rules (and contract terms) is classic protected activity. As I have found, the timing of the sudden denial of Mantell's request to review the out-of-work list raises an inference that the Respondent knew of Mantell's policing of the referral system and suggests animus as the motive for the denial of his request. Neither the evidence generally, nor the Respondent specifically, offers any alternative explanation for the denial, much less one establishing that the Respondent would have denied Mantell access to the out-of-work list on June 27, in the absence of his protected activity. I find the violation as alleged.

The General Counsel also alleges that the Local Union's change in posting frequency of the out-of-work list, beginning sometime in late June or early July, was motivated by Mantell's policing activity on June 26, and on that basis also violated Section 8(b)(1)(A) of the Act. In short, the General Counsel alleges that the Respondent's move to post the out-of-work list on a weekly basis—instead of members having to ask at the desk to see it but being able to see updates daily—violated the Act. I do not agree.

First, while the timing of the change to weekly posting came after Mantell's June 26 policing activity, unlike the June 27 incident denying Mantell the out-of-work list, the change in posting policy is otherwise credibly explained by the Respondent. Neri explained that the change was made because of an uptick in members viewing and photographing the list. Having them have to involve a union secretary or Neri every time someone wanted to see the list was disruptive and "an aggravation." So the Union began posting the updated list weekly and members could view, take notes, or photograph the list without requiring a union secretary to stop what he or she was doing and provide them the list. This is plausible, and, in my view, a credible explanation. And,

of course, it benefitted members because with the list posted they did not have to have assistance (i.e., consent) of the Local Union to view the list—so the change was not entirely adverse. The "adverse" part of the change was that members could now see the changes in the list only weekly. The nexus between Mantell's June 26 policing of the out-of-work list and this reasonable policy change is quite thin. Notably, this change did not apply just to Mantell. Indeed, even assuming, arguendo, that the General Counsel has met his initial *Wright Line* burden to show that the Respondent was motivated to make this change in overall policy based on Mantell's protected activities, I find that with Neri's explanation the Respondent has demonstrated that it would have made the change even absent Mantell's going down to the construction site to police the referral list on June 26.

I note that it is to be remembered that the General Counsel is not alleging that the Union's change in posting policy was a breach of the duty of fair representation. He is also not alleging that the change in policy was discriminatorily motivated by Mantell or other employees' repeated requests to view the out-of-work list. Nor could the General Counsel successfully maintain such claims. Particularly in a nonexclusive hiring hall, where the duty-of-fair representation does not apply,²¹ but even in an exclusive hiring hall, there is no general "right" of members to view the out-of-work list at any time, without regard to the Union's legitimate concerns and rationales. The Local Union's effort to avoid the disruption to staff of many requests to see the out-of-work list by posting a weekly list is a good-faith, non-arbitrary, non-discriminatory basis for its actions. See *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6, slip op. at 5 & fn. 5 (2017) (in exclusive hiring hall, duty of fair representation is violated only when access to out-of-work list denied on arbitrary, discriminatory, bad-faith basis). In any event, the General Counsel does not allege a breach of the duty of fair representation or that the Union's change in policy was motivated by Mantell or employees' over-requesting of the out-of-work list. I will recommend dismissal of this allegation.

CONCLUSIONS OF LAW

1. The Respondent Laborers' International Union of North America, Local Union No. 91 is a labor union within the meaning of Section 2(5) of the Act.
2. The Respondent violated Section 8(b)(1)(A) of the Act, in or about early November 2016, by threatening Charging Party Ronald Mantell with internal union charges if he contacted the National Labor Relations Board.
3. The Respondent violated Section 8(b)(1)(A) of the Act, on or about June 27, 2017, by refusing to show Charging Party Ronald Mantell the Local's out-of-work list in retaliation for his protected and concerted activity.
4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed

²¹ *Carpenters Local Union 370 (Eastern Contractors Assn.)*, 332 NLRB 174, 174–175 (2000).

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to effectuate the policies of the Act.

The Respondent, having unlawfully refused to show Ronald Mantell the out-of-work list on June 27, 2017, must grant Ronald Mantell's request to examine the out-of-work referral list. If a version of the out-of-work list as it existed on June 27, 2017, when Mantell was denied his request to see the list, is saved or retrievable, the Respondent must permit him to examine the list as it existed on June 27, 2017.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Respondent's offices or wherever the notices to members are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 3 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²²

ORDER

The Respondent, Laborers' International Union of North America, Local Union No. 91, Niagara Falls, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening Ronald Mantell or any employee with reprisals if he or she contacts the National Labor Relations Board.

(b) Refusing requests of Ronald Mantell or any members to examine the out-of-work referral list in retaliation for protected and concerted activity.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Grant Ronald Mantell's request to examine the out-of-work referral list. If a version of the out-of-work list as it existed on June 27, 2017, when Mantell was denied in his request to see the list, is saved or retrievable, permit him to examine the list as it existed on June 27, 2017.

(b) Within 14 days after service by the Region, post at its Niagara Falls, New York facility copies of the attached notice marked "Appendix."²³ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper

notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 11, 2017

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with reprisals for contacting the National Labor Relations Board.

WE WILL NOT refuse to show you the out-of-work list in retaliation for your protected and concerted activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL grant Ronald Mantell's request to examine the out-of-work referral list and WE WILL, if a version of the out-of-work list as it existed on June 27, 2017, when Mantell was denied in his request to see the list, is saved or retrievable, permit him to examine the list as it existed on June 27, 2017.

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AMERICA, LOCAL UNION NO. 91

Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CB-196682 by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

²² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Petition for Review, Dated September 9, 2019.

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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Laborers' International Union of North America,
Local Union No. 91 (Scrufari Construction),

Petitioner

Case No.: _____

v.

National Labor Relations Board,

Respondent.

**PETITION FOR REVIEW OF DECISION AND ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

Petitioners, Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction), hereby petition the United States Court of Appeals for the Second Circuit for review of, and respectfully request that the Court modify or set aside in its entirety, the Decision and Order entered by Respondent National Labor Relations Board on August 12, 2019, in Cases 03-CB-196682 and 03-CB-201412. A copy of the Decision and Order, reported at 368 NLRB No. 40, is attached as Exhibit A.

Dated: September 9, 2019
Buffalo, New York

BY: /s/ Robert L. Boreanaz
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Petition for Review, Dated September 9, 2019.

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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Laborers' International Union of North America,
Local Union No. 91 (Scrufari Construction),

Petitioner

Case No.: _____

v.

National Labor Relations Board,

Respondent.

**PETITION FOR REVIEW OF DECISION AND ORDER OF
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NOTICE OF SERVICE OF PETITION FOR REVIEW AND LIST OF THOSE SERVED

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, Petitioner Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction), hereby certifies that on September 9, 2019, in conjunction with the filing of its Petition for Review, it caused copies of the Petition and this Notice to be served by delivering a copy of the same via United States Postal Service, first class mail to:

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Dated: September 9, 2019
Buffalo, New York

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